

# **EXHIBIT 1**

## **PART 1**

**In The Matter Of:**

*Fair Fight Action v.  
Raffensperger*

---

*Kevin Kennedy*

*March 31, 2020*

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*Regency-Brentano, Inc.*

*13 Corporate Square*

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*Atlanta, Georgia 30329*

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Min-U-Script® with Word Index

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

FAIR FIGHT ACTION, INC., )  
et al., )  
 )  
Plaintiffs, ) CIVIL ACTION FILE  
 )  
vs. ) NO. 1:18-cv-05391-SCJ  
 )  
BRAD RAFFENSPERGER, in his )  
official Capacity as Secretary )  
of State of Georgia; et al., )  
 )  
Defendants. )  
\_\_\_\_\_ )

Telephonic deposition of KEVIN J.  
KENNEDY, taken on behalf of the Defendants,  
pursuant to Notice and agreement of counsel,  
in accordance with the Federal Rules of Civil  
Procedure, before Cynthia B. Gatewood,  
Certified Court Reporter, at 41 Rough Lee  
Court, Madison, Wisconsin, on the 31st day of  
March 2020, commencing at the hour of  
9:01 a.m. CST.

\_\_\_\_\_  
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22 (Whereupon, disclosure as required by the  
23 Georgia Board of Court Reporting was made by the  
24 court reporter, a written copy of which is  
25 attached hereto.)

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1 MR. BELINFANTE: This is the deposition of  
2 Kevin J. Kennedy taken by the defendant, Secretary  
3 of State Brad Raffensperger, for the purposes of  
4 discovery and all purposes allowed under the  
5 Federal Rules of Civil Procedure. The deposition  
6 is proceeding by telephone given the current  
7 public health situation. And by agreement of  
8 counsel, the witness will be sworn and counsel  
9 will treat that effective. Is that agreeable,  
10 Beth?

11 MS. TANIS: Yes, that's agreeable.

12 MR. BELINFANTE: Okay. Will you go ahead  
13 and swear the witness, then.

14 KEVIN J. KENNEDY,  
15 having been first duly sworn, was examined and  
16 testified as follows:

17 CROSS-EXAMINATION

18 BY MR. BELINFANTE:

19 Q. Great. Thank you. Again, Mr. Kennedy, my  
20 name is Josh Belinfante. I represent the defendants in  
21 this case. I'm joined on the phone, not in the same  
22 room, by Melanie Johnson. And I want to say for the  
23 record thank you to plaintiffs counsel and thank you to  
24 you as well. This deposition was originally scheduled  
25 for, I believe, last Friday. And per my request, we

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1 had moved it to today, so thank you again for that.

2 A. You're welcome.

3 MR. BELINFANTE: Beth, would you -- I  
4 presume we're going to -- or you're going to  
5 reserve all objections except those going to  
6 privilege and the form of the question and  
7 responsiveness of the answer until trial or first  
8 use of the deposition. Is that agreeable?

9 MS. TANIS: Yes. And I construe privilege  
10 there to include work product.

11 MR. BELINFANTE: Sure, absolutely.

12 BY MR. BELINFANTE:

13 Q. Mr. Kennedy, have you been deposed before?

14 A. Yes, I have.

15 Q. Okay. In what cases were you deposed, do  
16 you recall?

17 A. I don't remember all of the cases. As  
18 Wisconsin's chief election officer for over 30 years, I  
19 was a defendant in any number of cases where I was  
20 deposed. Probably the two most recent cases in which I  
21 had a deposition, my last case in my capacity I was  
22 deposed in the One Wisconsin Now case, which you have a  
23 copy of the order. And I was last almost -- well,  
24 about nine months ago I was deposed in a case in North  
25 Carolina for a circuit court case in which I'm an

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1 expert witness, which is the Bouvier case, which again  
2 you have at least the amended complaint for.

3 Q. Okay. So you know then the general rules,  
4 and I think we're all -- at least me, given this  
5 format, we're all swimming a little bit in some new  
6 waters. But, as you know, we can't talk over one  
7 another just because that makes it hard for the court  
8 reporter. You'll need to answer questions yes or no as  
9 opposed to huh-uh or uh-huh because that too will make  
10 for a cleaner record. If you need to take a break at  
11 any time, just let me know. We'll take a break. The  
12 only question -- or the only request I have is that if  
13 there's a question on the floor, you can answer the  
14 question, and then we can take a break after that. Is  
15 that agreeable?

16 A. Yes, it is.

17 Q. Great. And then last, I may ask questions  
18 today that sound confusing. I promise you I'm not  
19 trying to confuse you. So if a question is unclear to  
20 you, will you just let me know, and I'll try to  
21 rephrase it.

22 A. Yes.

23 Q. Great. All right. What did you do to  
24 prepare for today's deposition?

25 A. I reviewed my report a number of times. I

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1 went back and looked at the depositions of Chris  
2 Harvey. There were three different depositions that he  
3 provided in this case. Since my report, I've looked at  
4 expert witness depositions that were taken after my  
5 report, notably the depositions of Ken Mayer, Dan  
6 Smith, Michael McDonald. There were two other  
7 professors, one from I think Dartmouth.

8 Q. Was that Dr. Herron?

9 A. Yes, yes, Dr. Herron.

10 Q. Okay.

11 A. And looked at a large number of training  
12 materials that were produced since my report and  
13 complaints from the 2017 and 2018 elections. Obviously  
14 met with counsel just to go over my report and their  
15 expectations of what they thought might be asked today.

16 Q. Sure. Okay. And in looking at the  
17 additional training materials, do you know if you  
18 looked at the 2020 poll worker manual as it's called?

19 A. No. In fact, I made a specific request  
20 about that and was advised that it had not been  
21 produced.

22 Q. Okay. Do you know about when you made that  
23 request?

24 A. Within the last two weeks.

25 Q. Okay.

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1 MS. TANIS: Josh, has it been produced?

2 MR. BELINFANTE: My understanding is that it  
3 was produced on about the 13th or the 15th, one of  
4 those.

5 MS. TANIS: Oh, okay. I'm sorry. Well, I'm  
6 unaware of that, so --

7 MR. BELINFANTE: Maybe the -- it's somewhere  
8 before the 20th and after the 10th. How's that?

9 MS. TANIS: Okay.

10 BY MR. BELINFANTE:

11 Q. Okay. Do you know, Mr. Kennedy, roughly how  
12 much time you spent preparing your report?

13 A. I would be guessing. I put in quite a bit  
14 of effort looking at a lot of materials, so I don't  
15 know the exact amount of hours that I've put in.  
16 Probably more than I billed for, I'm sure.

17 Q. And do you know when you started working on  
18 your report?

19 A. Again, I don't recall exactly. I was  
20 originally contacted in late September and had a number  
21 of conversations in October with different -- and began  
22 looking at materials. And this is all in 2017. The  
23 bulk of the work was done in November and early  
24 December. Again, it --

25 Q. You just said 2017. Did you mean 2019?

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1 A. I did mean 2019.

2 Q. Okay.

3 A. It was definitely 2019.

4 Q. All right. I was going to give plaintiffs'  
5 counsel a real strong kudos for some real foresight,  
6 but all right. We'll go with 2019. Okay. And who  
7 first contacted you about providing expert services in  
8 this litigation, do you recall?

9 A. John Chandler.

10 Q. Okay. And what were you asked to provide an  
11 opinion on?

12 A. Well, I lay it out at the beginning and the  
13 end of my report, but basically to opine on what the  
14 basic policies, procedures, practices that should be in  
15 place for -- by the State Elections Board and the  
16 Secretary of State's office for the training of local  
17 election officials, including county officials, poll  
18 workers, and other participants in the process, to  
19 ensure that they are able -- that they are carrying out  
20 their responsibilities and to ensure that there is  
21 compliance with federal and state laws regarding the  
22 administration of elections in the state of Georgia.

23 Q. All right. Not asking what the data was,  
24 but can you tell me if you were provided with any data  
25 or documents from plaintiffs' counsel?

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1           A.     Yes, I was provided with a large volume of  
2 materials from plaintiffs' counsel that was made  
3 available to them through discovery.

4           Q.     Were you asked by plaintiffs' counsel to  
5 make any assumptions in terms of your analysis?

6           A.     I was not.

7           Q.     Let's go ahead and enter into as an exhibit  
8 Exhibit 1, which is your report with the document  
9 number 167 at the top. And, Mr. Kennedy, just let me  
10 know when you have that in front of you.

11                   (Whereupon, Defendants' Exhibit Number D-1  
12 was marked for identification.)

13           A.     Okay. I have a written copy of it in front  
14 of me. I can also pull it up on my tablet, if  
15 necessary. And some of the documents that you proposed  
16 that I look at I will have to access that way.

17 BY MR. BELINFANTE:

18           Q.     Okay. And just let me know what I can do to  
19 make it easier as well. What I've tried to do is, when  
20 I refer to a page number, refer to the court's page  
21 number, which is about a page ahead sometimes of where  
22 the page number on the bottom is. But I'll, for the  
23 record, use both, and we'll go that way.

24                   Let me start with what is identified as  
25 Appendix A to your report. It's page 31 of 35 of

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1 Document 167. Appendix A starts a new page number 1 at  
2 the bottom.

3 A. Yes.

4 Q. Other than the information that you  
5 described at the beginning, including additional  
6 depositions of Chris Harvey and the expert reports of  
7 Drs. Mayer, Smith, McDonald, and Herron, additional  
8 training materials and complaints, does Appendix A  
9 accurately reflect the universe of documents you  
10 considered for the purposes of your report?

11 A. Yes, it does.

12 Q. Okay. And I notice that one of the  
13 documents read was plaintiffs' amended complaint. Can  
14 you just tell me in your words what you believe this  
15 lawsuit is about?

16 A. I believe that the plaintiffs from the  
17 complaint have a number of voting rights claims,  
18 Section 1983 claims against the practices of  
19 administering elections in Georgia as they're carried  
20 out under the direction of the State Elections Board  
21 and the Secretary of State.

22 Q. In looking at page 3 of Appendix A, page 33  
23 of Document 167, under other materials there are three  
24 interviews listed there. Do you see where I'm talking  
25 about?

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1 A. Yes.

2 Q. Okay. Since this has been done, have you  
3 talked to anyone else about this lawsuit other than  
4 plaintiffs' counsel and those persons identified on  
5 page 3 of Appendix A?

6 A. The only conversations that I've had about  
7 the lawsuit other than this deposition today or  
8 something to my wife --

9 Q. I won't ask about that.

10 A. Yeah, or other individuals was a  
11 recognition, I'm not sure, a couple of months ago that  
12 one of the organizations on which I sit on the board is  
13 also doing work for the Georgia Secretary of State.  
14 And I had a discussion with David Becker of the Center  
15 for Election Innovation & Research to make it clear  
16 that we would not -- and we set out the protocols to  
17 make sure that there would be no discussion about the  
18 case.

19 Q. Okay.

20 A. So that would be the extent of that.

21 Q. Okay.

22 A. Talked to our counsel on that as well  
23 obviously.

24 Q. Sure. What did you talk about with Tammy  
25 Patrick from Arizona?

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1           A.       Basically Tammy Patrick is a long-time  
2       colleague who currently -- I'm trying to think what the  
3       organization she works for now is, but she was a member  
4       of the president's commission that was formed after the  
5       2012 election, and she's very knowledgeable in general  
6       about the landscape. And I talked to her about  
7       resources that might be available assessing training  
8       across the United States just to get a sense of the  
9       places I could be looking for more information that  
10      gave a broader perspective on training in the states.

11          Q.       Do you recall what resources she identified?

12          A.       Well, she basically said that they had  
13      worked when she was with the Bipartisan Policy Center  
14      to put together sort of a document compiling it. But  
15      she didn't have a lot of confidence in the quality of  
16      it, so I never looked at it. She said that it just  
17      wasn't done in a very -- good job. So I really did not  
18      get any additional materials to draw on other than my  
19      experience that I've had over the past 40 years dealing  
20      with election administration in the country.

21          Q.       Okay. How about Matt Masterson, do you  
22      recall your conversation with him?

23          A.       I do. Matt is a former --

24          Q.       And --

25          A.       Go ahead.

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1 Q. No, no, go ahead.

2 A. I was going to say Matt is a former  
3 commissioner on the U.S. Election Assistance  
4 Commission. He now works for the Department of  
5 Homeland Security, also a long-time colleague. He's a  
6 former -- he was an employee of the U.S. Election  
7 Assistance Commission. He also worked for the Ohio  
8 Secretary of State's office before he became a  
9 commissioner. And basically my conversations with him  
10 were to get the contact information for Merle King  
11 because he wrote an article and I wanted to confirm the  
12 information I had was current.

13 Q. And about how long did you talk to Merle  
14 King, do you recall?

15 A. Could have been about an hour.

16 Q. What were the topics, do you remember?

17 A. Basically I was just trying to make sure I  
18 understood the history of Kennesaw State's role in  
19 elections with the Secretary of State. I was quite  
20 familiar with it. I've known Merle and people he's  
21 worked with for quite a long time. He's -- he was  
22 usually the convenor of some of our election technology  
23 conferences that were held across the country. And,  
24 again, just wanted to make sure I had a good  
25 understanding of what the role was and how it had



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1 transitioned into the Secretary of State's office.

2 Q. All right. Let's turn to your CV, which is  
3 part of Document 167 beginning on page 28. It is  
4 separately paginated at the bottom.

5 A. Okay.

6 Q. You are an attorney; correct?

7 A. I am.

8 Q. Are you admitted in any states other than  
9 Wisconsin?

10 A. I am not admitted in any states other than  
11 Wisconsin but have several federal credentials.

12 Q. Sure. I'm sorry. Admitted as a member of  
13 the bar anywhere other than Wisconsin?

14 A. No.

15 Q. Okay. Have you ever issued an opinion on  
16 Georgia law before?

17 A. I have not.

18 Q. When was the last -- and when you were in  
19 private practice, or today, have you represented  
20 clients in litigation?

21 A. I have.

22 Q. When is the last time you represented a  
23 client in an active litigation? And by active  
24 litigation, I mean a lawsuit was actually filed.

25 A. Well, I'm not sure exactly. I was the

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1 general counsel for the Wisconsin Government  
2 Accountability Board. I obviously had attorneys  
3 working for me, so probably the last legal action that  
4 I did in that respect was to file an amicus brief that  
5 I signed and was actively involved in writing in front  
6 of the Wisconsin state supreme court, which would have  
7 been in 2015.

8 Q. Okay. What case was that, do you recall?

9 A. It was -- it involved a John Doe proceeding  
10 in which we were involved, so there's not much I can  
11 share about it. I know it starts out our main  
12 petitioner would be Schmitz I believe is the name of  
13 the case. A lot of the rest of it is sealed.

14 Q. Understood. Okay. Did that involve  
15 elections, or was that part of the campaign finance  
16 side of GAB?

17 A. That was campaign finance.

18 Q. Okay. Other than your time with the state  
19 for either the Government Accountability Board, which  
20 I'll refer to sometimes as GAB, or its predecessor  
21 organization, have you represented a client in private  
22 practice in active litigation, again, meaning there's  
23 an actual complaint that's been filed?

24 A. I have. I had a number of clients when I  
25 was in private practice in Madison. I was an assistant

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1 district attorney before that where I represented the  
2 state in traffic, misdemeanor, and felony cases.

3 Q. Okay. How about since leaving state, and by  
4 that I mean GAB, have you represented anyone in active  
5 litigation since then?

6 A. No, I have not.

7 Q. All right. In your current -- you currently  
8 work with or are employed by, own, Kennedy Election Law  
9 Services; is that right?

10 A. That's right.

11 Q. And does it have a website?

12 A. It does not.

13 Q. How many -- I read the CV, but what type of  
14 entities are clients of Kennedy Election Services?

15 A. Well, basically I've done -- I've provided  
16 expert witness testimony in this case and in the North  
17 Carolina case. I have worked for the District of  
18 Columbia on a campaign finance matter, along with a  
19 colleague of mine, former colleague of mine, basically  
20 independent contractors working for the District of  
21 Columbia to review their public funding program. That  
22 work ended last summer. I give a lot -- I give a lot  
23 of talks and presentations as, you know, a result of my  
24 continuing involvement in election administration. And  
25 that's basically it.

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1 Q. All right. You say your continuing  
2 involvement in election administration. Tell me what  
3 you mean by that.

4 A. Well, I sit on the board of two election  
5 related organizations, the Center for Election  
6 Innovation & Research, the U.S. Vote Foundation. I'm  
7 also on the advisory board for MIT's Election Data Lab.  
8 I participate in conferences for the Election Science  
9 and Research, which has annual meetings, you know,  
10 where I will review papers and comment on them. And  
11 I've continued to work for the City of Madison as a  
12 poll worker.

13 Q. All right. For the organizations you  
14 identified, for any of those have you been asked to  
15 advise or consult with state governments on election  
16 administration?

17 A. I have not.

18 Q. And I think you answered this, but just to  
19 be clear, has Kennedy Election Services been retained  
20 by any state government for advice or consultation on  
21 election administration?

22 A. No.

23 Q. Let's talk about the case for a minute that  
24 you identified. And I think I'm pronouncing it right,  
25 Bouvier versus Porter?

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1 A. Yes.

2 Q. That's a North Carolina case in state court;  
3 correct?

4 A. That's right.

5 Q. And tell me what that case is about in your  
6 words.

7 A. There are a number of individuals in North  
8 Carolina that were aggrieved by election complaints  
9 that were filed against them claiming that they had  
10 violated North Carolina and federal law by voting more  
11 than once in the 20 -- I believe it was the 2016  
12 gubernatorial election. And they brought a defamation  
13 case, and I was asked to look at the matching process  
14 that the defendants used to identify these individuals  
15 as multiple voters and to comment on the efficacy of  
16 that matching process.

17 Q. Okay. What is the status of that case now?  
18 Is it still pending?

19 A. It is still pending. I know that they were  
20 in a mediation or negotiation -- a mandated period  
21 where they were supposed to be trying to resolve the  
22 case. My understanding is it hasn't been resolved and  
23 trial may occur this summer.

24 Q. Do you know -- and I don't know North  
25 Carolina civil procedure, but has your expert

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1 designation been challenged by the defendant in that  
2 case?

3 A. It has not, to my knowledge.

4 Q. All right. Okay. And the next one is the  
5 One Wisconsin Institute versus Thomsen decision. Let's  
6 go ahead and mark that one Exhibit 2. And for the  
7 record, I'm referring to the opinion which is at 198 F.  
8 Supp. 3d 896 from the Western District of Wisconsin in  
9 2016.

10 (Whereupon, Defendants' Exhibit Number D-2  
11 was marked for identification.)

12 BY MR. BELINFANTE:

13 Q. In your words, what was that -- or go ahead,  
14 sir.

15 A. I was just going to advise you I haven't  
16 pulled it up yet. And I know that when I printed it  
17 out, it was very difficult to read and review. I have  
18 another copy that's a PDF version of that that I can  
19 look at.

20 Q. Okay.

21 A. If that's all right with you, I will -- I  
22 will pull that one up because it's the one that I got  
23 after the decision was released. It doesn't have the  
24 West case headnotes and things like that in it.

25 Q. Sure.

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1           A.     If you're comfortable with that, that's the  
2 one I will pull up.

3           Q.     Absolutely.

4           A.     And then just give me a second to get that  
5 in front of me.

6           Q.     Sure. Just let me know when you have it.

7           A.     I did not want to print 119 pages.

8           Q.     Understood.

9           A.     All right. I have that in front of me.

10          Q.     Okay. In your words, can you just tell me  
11 what that case was about?

12          A.     This was an action brought by a -- by two  
13 different voting rights groups and a number of  
14 individual plaintiffs against -- originally against the  
15 Government Accountability Board and two of its  
16 officers, including myself and my elections division  
17 administrator. So I was one of the named defendants in  
18 the original action, and it was brought challenging a  
19 series of laws that were enacted by the legislature in  
20 the 2011-2012 and 2013-2014 session that made a number  
21 of changes to the administration of laws -- election  
22 laws in the state of Wisconsin.

23          Q.     And when were those laws passed?

24          A.     There was probably eight or nine separate  
25 acts that were passed over a four-year period. The

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1 first --

2 Q. Okay.

3 A. The first one was May 25th of 2011, which is  
4 the state's new voter ID law. And that included some  
5 additional changes, and that proceeded well into the  
6 fall of 2013. There may have been some things in the  
7 spring of 2014. The legislative session usually ends  
8 around March of an even-numbered year.

9 Q. All right. The court describes your  
10 testimony starting at the end of page 924 as I have it.  
11 It's in the section under (c), other challenged  
12 provisions.

13 A. Give me a second to find it.

14 Q. Sure. It's at a paragraph that begins, "The  
15 acknowledged impetus for this law was the sight of long  
16 lines of Milwaukee citizens voting after hours."

17 A. Sorry. I'm just scrolling through looking  
18 for headings.

19 Q. Sure. There's a block quote with your --

20 A. Yeah, I remember the quote. I remember the  
21 quote, but I want to have it in front of me before we  
22 talk about it.

23 Q. Oh, absolutely. Yes, yes.

24 A. You say it's under other challenged  
25 provisions?



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1 Q. Yes, little (c). I guess it's big C,  
2 intentional discrimination, then little (c), other  
3 challenged provisions.

4 A. Yes, okay. "The acknowledged impetus for  
5 this law was the sight of long lines," et cetera?

6 Q. Yes.

7 A. And then there's a block quote, which is --

8 Q. Yes.

9 A. -- attributed to -- yes.

10 Q. All right. So my question is with that last  
11 sentence that introduces the block quote, it says, "At  
12 trial, Kevin Kennedy, director of the GAB, confirmed  
13 that the purpose of reducing the hours for in-person  
14 absentee voting was to restrain voting in Milwaukee."  
15 Do you see that?

16 A. I do.

17 Q. Do you agree with that characterization of  
18 your testimony?

19 A. I think that's a fair characterization of  
20 the testimony.

21 Q. All right. And the block quote that's there  
22 appears to quote from the transcript of the trial. I  
23 don't expect you to recall if that is an accurate  
24 statement word for word, but generally is that block  
25 quote consistent with your testimony?

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1 A. Yes.

2 Q. Okay. And you were a witness in that case.  
3 You were a fact witness and not an expert witness;  
4 correct?

5 A. That -- I guess that's a fair  
6 characterization. I was a defendant. The plaintiffs  
7 called me adversely as the first witness in their  
8 trial.

9 Q. I see. Okay. So you were not -- you were  
10 not testifying in any case as an expert in election  
11 administration.

12 A. Well --

13 Q. Let me ask it this way. Were you qualified  
14 as an expert witness in the One Wisconsin Institute  
15 case?

16 A. No, I was not qualified as an expert.

17 Q. Okay.

18 MS. TANIS: Josh, and what you mean by  
19 qualified as an expert was actually like getting  
20 the court saying, yes, he's an expert witness and  
21 he's qualified to be an expert witness?

22 MR. BELINFANTE: Yes.

23 THE WITNESS: And that was my understanding  
24 of your question as well.

25 / / /

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1 BY MR. BELINFANTE:

2 Q. Okay. Great. So we're on the same page.  
3 Have you been qualified as an expert, as Ms. Tanis just  
4 defined it, in any litigation involving election  
5 administration?

6 A. I have not. I've testified primarily as a  
7 fact witness because of my expertise, but obviously  
8 that does not mean that we went through the process of  
9 qualifying me as an expert. I believe there were cases  
10 where the court recognized that expertise. They tended  
11 to be trial cases in Wisconsin.

12 Q. And did they involve -- and forgive me if  
13 what I'm about to ask is a painfully obvious question,  
14 but you understand the process we're in. Those cases  
15 in Wisconsin, did they involve questions of Wisconsin  
16 election administration?

17 A. Yes.

18 Q. Okay. If you can turn in your report,  
19 again, Document 167, the substantive report itself,  
20 page 2 of the court filing beginning on page 1 of the  
21 report, there's a heading synopsis that goes over to  
22 page 2 or page 3 of the court document.

23 A. Yes.

24 Q. Does that portion synopsis reflect the  
25 opinions that you are offering in this report?

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1 A. Yes, it does.

2 Q. Okay. So let me ask a series of questions  
3 about things to see -- to make sure that effectively  
4 what you're not opining on. Are you giving an opinion  
5 on what is referred to by the plaintiffs as the use it  
6 or lose it statute?

7 A. I certainly looked at the allegations  
8 concerning that in the various information in there,  
9 and that informed my opinions about training and  
10 procedures related to administration of law. But it  
11 was not something, the practice itself, that I provided  
12 an opinion on.

13 Q. All right. And you're not providing an  
14 opinion on the policy of what plaintiffs refer to as  
15 exact match; is that correct?

16 A. Again, I certainly looked at the allegations  
17 concerning that, the materials related to that in  
18 looking at training and enforcement and complaints that  
19 were filed, but I did not prepare an opinion on the  
20 exact match policy.

21 Q. And I know throughout your report you cite  
22 several provisions in Georgia law. Did you happen to  
23 look at legislation passed in 2019 known as House Bill  
24 316 to see what changes were made, or did you just go  
25 statute by statute as identified in your report?

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1           A.       I looked at the statutes that were  
2 available, which would have been after the law was  
3 passed. In my preparation there were a lot of  
4 questions in the depositions about changes that House  
5 Bill 316 made. I did not look at the legislation  
6 itself. But, you know, there were materials that were  
7 presented that summarized House Bill 316 that were part  
8 of the materials presented to the county election  
9 official conferences, so in that sense I had somewhat  
10 of a familiarity with the changes.

11           Q.       All right. Are you offering an opinion on  
12 whether any state officials have acted with intentional  
13 discrimination towards voters of color?

14           A.       Again, I looked at allegations concerning  
15 that, materials related to that, but I'm not offering  
16 an opinion specifically on that, no.

17           Q.       All right. Okay. Let's talk briefly about  
18 your time with the Government Accountability Board in  
19 Wisconsin and its predecessor organization. Who  
20 appointed you as the director of the GAB?

21           A.       The Government Accountability Board itself  
22 appointed me. They are six former judges who were  
23 appointed by the governor from a list that was  
24 recommended to the governor by state court of appeals  
25 judges based on applications they reviewed, and then

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1 they were confirmed. The initial board was -- half of  
2 it was confirmed by the assembly and half by the  
3 senate. Following that initial appointment, members  
4 were confirmed by the senate only.

5 Q. All right. Are judicial positions in  
6 Wisconsin partisan?

7 A. They are not.

8 Q. All right. On Document 167 again, your  
9 report, page 3 for the court and page 2, you write  
10 under the professional background, second paragraph,  
11 last sentence, you held the position -- that position,  
12 meaning director and general counsel for the GAB, until  
13 the dissolution of the GAB on June 29th, 2016. Do you  
14 see that?

15 A. Yes.

16 Q. The GAB was dissolved by an act of the  
17 legislature; is that correct?

18 A. That's right.

19 Q. And was that Wisconsin Act 118 of the 2015  
20 assembly?

21 A. Yes, it was.

22 Q. Okay. Do you have a copy of that with you?

23 A. I can pull up a copy by pulling up the link  
24 that you provided.

25 Q. Okay. Let's go ahead and mark that as

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1 Exhibit 3.

2 (Whereupon, Defendants' Exhibit Number D-3  
3 was marked for identification.)

4 BY MR. BELINFANTE:

5 Q. I may not have any real questions from it,  
6 so we'll just go ahead and mark it while we're there.  
7 Why, in your opinion, did the legislature dissolve --  
8 well, let me ask this first. How were the functions of  
9 the GAB -- let me start over. Act 118, as I understand  
10 it, broke out the campaign finance functions of the GAB  
11 from the election functions, and there are now two  
12 different boards, one governing elections and one  
13 governing campaign finance. Is that accurate?

14 A. Not entirely, no.

15 Q. Okay. But -- go ahead.

16 A. The fact is the GAB was responsible not only  
17 for campaign finance and elections but also ethics and  
18 lobbying regulation. And ethics and lobbying  
19 regulation originally had been under a state ethics  
20 board, and elections and campaign finance had been  
21 under a state elections board before the creation of  
22 the GAB. And I was in charge of the State Elections  
23 Board, which had elections and campaign finance.

24 When the GAB was created, two divisions were  
25 created, an elections division and an ethics and

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1 accountability division, which had ethics, campaign  
2 finance, and lobbying as its responsibilities. When  
3 the GAB was dissolved and two new commissions were  
4 created, one was an elections commission, and the other  
5 was an ethics commission which has responsibilities for  
6 campaign finance, lobbying, and ethics.

7 Q. Got it. Okay. Why, in your opinion, did  
8 the legislature make that decision?

9 A. The legis -- well, if you look at the  
10 structure of the agencies, it's reflected in the fact  
11 that the legislature chafed under the existence of an  
12 independent executive branch agency that was not part  
13 of the governor's cabinet. It was an independent  
14 agency created by the legislature again in 2007, but it  
15 was a sense, from my opinion, that the legislature  
16 wanted more control of this executive branch agency  
17 which regulated election administration, campaign  
18 finance, ethics, and lobbying, all actions that touch  
19 very clearly on the operations of the legislature.

20 And if you look at the structure of the two  
21 new commissions, even though it's technically an  
22 executive branch agency, four of the members are direct  
23 appointees of the legislature, and the other two  
24 commissioners that are appointed by the governor come  
25 from lists submitted by the legislature, one Democratic

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1 list of former clerks or a Republican list of former  
2 clerks that the governor has to choose from for the  
3 elections commission and a separate list of I believe  
4 former judges for the ethics commission.

5 Q. Okay. And does the elections commission  
6 have an executive director today?

7 A. They call it an administrator is the title  
8 for the position.

9 Q. That's right. And who is the administrator  
10 today?

11 A. Today it is Meagan Wolfe.

12 Q. Did she work with you at the GAB?

13 A. She did.

14 Q. Okay. And who appoints the administrator?

15 A. The commission appoints the administrator  
16 subject to confirmation by the senate.

17 Q. All right. Okay. Looking at again your  
18 report, Document 167, at pages 28 -- that's not right.  
19 Hang on one second. I'll tell you what. I'll come  
20 back to that. Actually, I'll just ask this. While you  
21 were the executive director of the GAB, one of the  
22 things you were responsible for was directing the  
23 implementation of federal mandates under the Help  
24 America Vote Act of 2002, or HAVA; is that correct?

25 A. That's correct, although let me clarify that

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1 my title in the statute was legal counsel for the  
2 board. The working title that the board adopted when I  
3 was hired was director and general counsel because they  
4 saw me as the chief of staff for the organization but  
5 recognized I was also the lead counsel for the agency.

6 Q. I see. Okay.

7 A. So --

8 Q. And -- go ahead.

9 A. I was going to say so, for example, when  
10 you're looking at Wisconsin Act 118, you know, the  
11 statutory record of my position would be legal counsel.  
12 That position was --

13 Q. I gotcha. Okay.

14 A. -- dropped and replaced by administrator.

15 Q. All right. Oh, I found where I was looking.  
16 It's on your CV. So it's correct that it's  
17 Document 167, page 28 and 29 of the court document.  
18 It's at the bottom of page 1 and 2 for your CV.

19 A. Yes.

20 Q. When you say there at the bottom that you  
21 were responsible for directing and implementation of  
22 the HAVA mandates, what does that mean? What did that  
23 entail?

24 A. Well, first of all, it recognizes the fact  
25 that HAVA requires that there be a chief state election

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1 official who's ultimately responsible for the  
2 implementation and administration of the Help America  
3 Vote Act in that state.

4 Q. Yep.

5 A. And since that was passed in 2002, it meant  
6 making sure that the state complied with the mandatory  
7 requirements of Title III, which basically dealt with  
8 accessible voting equipment, voting equipment  
9 standards, establishing a statewide voter registration  
10 system, establishing a system of provisional ballots,  
11 establishing an independent complaint process. Those  
12 were the basic requirements of the Help America Vote  
13 Act that the chief election officer and, in my case, I  
14 would have been responsible for implementing for the  
15 state of Wisconsin and continuing to administer and  
16 would be accountable for its responsibilities. That's  
17 carried over obviously to this day. It would now be  
18 Meagan Wolfe's responsibility since that's the role she  
19 plays on that.

20 It also meant responsible for the proper --  
21 acceptance and proper use of the federal funds that  
22 came with the Help America Vote Act, and there's been  
23 continuing funds distributed even as recently as 2019  
24 to the states under the provisions of the Help America  
25 Vote Act, mostly for election security, but there's now

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1 something that was passed with the stimulus package  
2 that provided \$400 million to the states under the  
3 auspices of the Help America Vote Act to assist dealing  
4 with the breakout.

5 Q. Okay. And in your role also at the GAB,  
6 were you responsible for implementing any federal  
7 mandates arising out of The Uniformed and Overseas  
8 Citizens Absentee Voting Act or UOCAVA?

9 A. Yes, I was.

10 Q. And do you deem your efforts in implementing  
11 UOCAVA to have been successful in Wisconsin?

12 A. They have been generally successful. I  
13 think they -- you know, it's an area that requires  
14 constant vigilance. But, yes, they were successful.  
15 We spent quite a bit of time in litigation with the  
16 U.S. Department of Justice.

17 Q. And those are lawsuits that the Department  
18 of Justice brought against Wisconsin?

19 A. That's right.

20 Q. All right. And there was a consent decree  
21 entered in at least one of those cases; right?

22 A. Yes.

23 Q. And is it true that the department alleged  
24 that there was not uniformity across Wisconsin's  
25 cities, towns, and villages in the implementation of

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1 UOCAVA?

2 A. That might be how they characterized  
3 individual clerks' failures to comply with it.

4 Q. How would you characterize what the DOJ  
5 was -- had sued the state over?

6 A. Well, there was some disagreement about the  
7 interpretation of the law and the application of the  
8 law that got resolved in that, but there was also a  
9 recognition that there were a handful of the 1850 -- at  
10 that time probably 1854 municipal clerks who did not  
11 meet the state or federal requirements for the timing  
12 of getting ballots to the clerks. And we had to ensure  
13 that there was extraordinary action taken to cover  
14 those handful of cases, a little small number of cases.

15 Q. To your knowledge, has that consent decree  
16 been lifted?

17 A. I do not know.

18 Q. Let me ask this. What is the difference in  
19 Wisconsin between a city, a town, and a village?

20 A. Basically they are three individual  
21 governmental units. Cities and villages are  
22 incorporated and have certain degrees of power. Towns  
23 are an individual unit of government. Most of you  
24 would think of them as rural county areas, I think.  
25 They are part of the 6 by 6 square mile grid within

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1 each county, which obviously that basic territory can  
2 be reduced by natural landmarks such as rivers, lakes,  
3 and annexations by cities. There may be a village  
4 incorporated within the boundaries of the town on that.

5 But basically when Wisconsin was  
6 established, there was a grid -- all of the towns got  
7 divided into roughly 6 by 6 squares, and they were  
8 given autonomy as the town -- electing a town board, a  
9 treasurer, a clerk. They could elect a constable. But  
10 it is a unit of government with its own taxation, its  
11 own administration requirements. And the town clerk  
12 was responsible for running elections just like a  
13 village clerk or a city clerk would be.

14 Q. Okay. So each one of those units, village,  
15 town, city, run elections within their jurisdiction; is  
16 that correct?

17 A. That's right.

18 Q. Okay. And if there's a statewide election,  
19 those three entities, village, town, and cities, will  
20 still be implementing or administering the elections in  
21 those jurisdictions; is that right?

22 A. That's correct.

23 Q. Okay. If you could go ahead and pull  
24 Wisconsin Statute Section 5 dash -- or, excuse me,  
25 5.05, the elections commission statute. And we'll go

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1 ahead and mark -- sure. We'll mark that Exhibit 4.

2 (Whereupon, Defendants' Exhibit Number D-4  
3 was marked for identification.)

4 A. So I have the PDF for Chapter 5 available  
5 that then breaks it down into sections.

6 BY MR. BELINFANTE:

7 Q. Okay. That's fine. I'm looking at 5.05.

8 A. Okay.

9 Q. And specifically -- I don't know if you'd  
10 call it subsection 7 which has got the heading  
11 "Administrative meetings and conferences."

12 A. Yes.

13 Q. Okay. Would you agree with me that Section  
14 7 is the only time that training appears in Code  
15 Section 5.05?

16 A. I'm not entirely sure because there are --  
17 there's a voter education provision below that in  
18 Section 12. There's a section in 14 that requires the  
19 commission to gather information from county and  
20 municipal clerks, all of which -- there's a policies  
21 and procedures section in sub 16 and the sub 15 under  
22 the registration. Most all are going to implicate  
23 training. But as far as a specific charge goes, that  
24 is the directive for the commission.

25 Q. I see. All right. And Section 5.05,

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1 subparagraph (7), that's where the commission at least  
2 has its authority to conduct regular information and  
3 training meetings on elections; is that correct?

4 A. That's right.

5 Q. All right. The Section 5.05(1)(d) -- let me  
6 know when you get there. It's the one that begins "sue  
7 for injunctive relief."

8 A. Oh, okay. Yes.

9 Q. Okay. That one says effectively that the --  
10 now the election commission can "sue for injunctive  
11 relief, a writ of mandamus or prohibition, or other  
12 such legal or equitable relief as may be appropriate to  
13 enforce any law regulating the conduct of elections or  
14 election campaigns, other than laws relating to [sic]  
15 campaign financing, or to ensure its proper  
16 administration." Do you see that?

17 A. Yes.

18 Q. Okay. As I went through Act 118, which  
19 amended Section 5.05 in 2015, the only change that I  
20 saw to that paragraph was the insertion of the language  
21 "other than laws regulating campaign financing." Would  
22 you agree with that?

23 A. Yes, I would.

24 Q. Okay. So while you were with the GAB, it  
25 could bring these lawsuits to enforce the conduct of

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1 elections or election campaigns. Maybe other stuff  
2 too, but that's what I'm focused on. Is that right?

3 A. Yes.

4 Q. Okay. How frequently did the GAB bring a  
5 lawsuit to enforce the conduct of elections or election  
6 campaigns during your tenure?

7 A. Well, I'm thinking that the -- I can only  
8 think of one specific occasion that we did that, and  
9 that was actually done under the auspices of the  
10 Wisconsin State Elections Board where we brought a  
11 lawsuit to ensure because the town board did not have  
12 enough people to appoint a clerk and we needed to make  
13 sure that there were individuals available to run an  
14 election in that municipality. So we brought a lawsuit  
15 for the purposes of having a court appoint someone to  
16 run elections because there was no active town board  
17 that could carry that out. That's the one case I can  
18 remember.

19 It certainly was something that we were  
20 aware of and kept under consideration for things such  
21 as our authority if we needed it in addition to other  
22 requirements to ensure that local election officials  
23 were complying with the law. There were other  
24 provisions that we had that were probably more  
25 effective than bringing a lawsuit.

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1 Q. Like what?

2 A. I'm sorry. Did you ask a question?

3 Q. Yeah. I'm sorry. What would you deem to be  
4 more effective than filing a lawsuit, other tools you  
5 had, other powers?

6 A. Section 5.06 of the statute basically  
7 provided that any complaint about the administration  
8 again was -- it was primarily limited to elections but  
9 allowed the fact you could not -- an outside party  
10 could not bring an action against a local election  
11 official without coming to us first under 5.06. And  
12 that gave us the power to conduct the investigation and  
13 to issue orders to conform their conduct to law. That  
14 tended to be much more effective.

15 Q. How frequently did that happen?

16 A. We had cases every year, mostly dealt with  
17 overseeing ballot access decisions that local officials  
18 made that didn't comply with the law.

19 Q. Roughly how many? And I realize -- and let  
20 me -- I'll try to narrow it for you. For the time that  
21 the GAB was in place, so from 2007 to 2016, do you  
22 recall on average how many a year of cases like that  
23 you would see that were pursuant to Wisconsin Statute  
24 5.06?

25 A. There would be more in odd-numbered years

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1 because there would be more local elections, offices  
2 for local -- offices up for consideration in that time  
3 period, so odd-numbered years would often generate  
4 more, although presidential years in Milwaukee offices  
5 were apt to generate some. But eight to ten cases  
6 would be usually under our purview.

7 Q. All right. Do you know where I could find  
8 information that identified those cases?

9 A. You would probably have to contact the  
10 current public information officer with the Wisconsin  
11 Elections Commission and make an open records request  
12 for opinions and orders that were issued under 5.06 for  
13 a particular period of time.

14 One of the things that the Wisconsin  
15 Elections Commission did was take down for all  
16 practical purposes the historical government  
17 accountability voter website. Obviously they converted  
18 a lot of information and documents to their own use,  
19 but a lot of the historical actions, which are required  
20 to be preserved under Wisconsin's open records law,  
21 would have to be accessed probably through -- she would  
22 probably be able to help you find those on something  
23 you're going to find available anymore.

24 Q. Okay. All right. Let me ask you to take a  
25 look in that same Code Section 5.05(2)(m), which is

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1 enforcement.

2 A. Yes.

3 Q. All right. And 2(m), paragraph (a), says  
4 that "The commission shall investigate violations of  
5 the law administered by the commission and may  
6 prosecute alleged civil violations of those laws," and  
7 then it goes on to talk about how. How often during  
8 your tenure with the GAB -- so, again, 2007 to 2016 --  
9 did the commission engage in investigating violations?

10 A. Well, this statute was used primarily for  
11 campaign finance and lobbying law at the time.

12 Q. Okay.

13 A. If you look at Act 118, you can see that  
14 Section 2(m) was essentially lifted and copied over in  
15 Chapter 19 under the responsibilities of the ethics  
16 commission. I can recall specifically one case that  
17 was brought investigating elections. Most of what we  
18 did under this section, again, was campaign finance,  
19 ethics and lobbying. And, you know, when the GAB was  
20 created, this section was created then to really direct  
21 the broad investigative authority -- the powers that  
22 the agency had.

23 There really aren't any civil penalties in  
24 Wisconsin for violating election laws or local election  
25 officials like Georgia has where they can be what we

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1 would call a forfeiture. I think you call them a fine,  
2 but it's not a criminal monetary penalty. We don't  
3 specifically have that. I've talked to local DAs who  
4 think there's some general catchall provisions where  
5 they could do that. But, again, most of our compliance  
6 probably would have gone under 5.06 for election  
7 issues. But we did use this section in 2011 to  
8 investigate the actions of a county clerk that  
9 generated a statewide recount.

10 Q. Tell me about that. What -- well, let me  
11 just ask it this way. What was the underlying issue  
12 that caused there to be a recount?

13 A. Well, on election night it looked like the  
14 incumbent supreme court justice, who had been appointed  
15 by the governor, was losing by a couple of hundred  
16 votes out of 1-1/2 million votes cast. And this was  
17 sort of a referendum on the new actions for the  
18 governor who had put in place some -- this led to a  
19 very politically turbulent time in Wisconsin between  
20 2011 and 2015 where the governor and the legislature  
21 essentially stripped collective bargaining rights of  
22 public employees and --

23 Q. Yep. Okay.

24 A. That was really one of the issues in this  
25 supreme court race, not directly, but it was viewed as

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1 that. And it looked like the incumbent justice who was  
2 facing his first election after being appointed was  
3 going to lose. And then when the county canvass in  
4 Waukesha County was conducted, the county clerk gave me  
5 a call right before holding a press conference to say  
6 they had, quote, found 7,500 votes for the incumbent.

7 And that switched the results of the  
8 election obviously and actually to a point where people  
9 who had been flying in from around the country to  
10 conduct this recount packed up and went home. We still  
11 conducted the recount, and Waukesha County got a lot of  
12 scrutiny. The losing candidate filed a complaint with  
13 our office claiming that the clerk had violated the  
14 law. We conducted a pretty thorough investigation on  
15 that.

16 Q. What was the conclusion of the  
17 investigation?

18 A. The conclusion was that the clerk did not  
19 carry out her responsibilities effectively. I mean,  
20 the bottom line was rather than following established  
21 procedures for canvassing election results, the clerk  
22 had basically not noticed that a whole municipality had  
23 not reported their results when it posted the  
24 unofficial results after the election. And so for one  
25 of the cities in Waukesha County, there would have

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1 been, had she paid attention when she was posting the  
2 results, 24 zeros from the 24 reporting units in the  
3 municipality.

4 But because it was a very large turnout, the  
5 vote totals on election night seemed to make sense to  
6 her. But, again, she did not have someone assisting  
7 her in entering the reported results, and so that whole  
8 municipality was missed. We basically documented it  
9 was not an intentional error, but there was significant  
10 negligence on behalf of the clerk on that. And we, of  
11 course, pointed out both the errors, including  
12 criticizing the fact that she knew about these things  
13 for two days before disclosing them.

14 Q. Was there any fine issued against the clerk  
15 or the county?

16 A. There was no fine issued because, again,  
17 there was no identification of a criminal violation.  
18 And what would have happened under 5.05(2)(m) would  
19 have been a referral to the district attorney for  
20 prosecution had there been probable cause to believe  
21 that she'd actually committed a crime as opposed to,  
22 you know, basic negligence. You know, it was clearly  
23 not intentional on her part in terms of the mistake  
24 that was made. But the failure to disclose was  
25 technically not, you know, something that was perceived

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1 by the board as a criminal coverup or anything like  
2 that.

3 Q. Was the clerk ordered to have any kind of  
4 extra training?

5 A. Yes, we did some significant followup for  
6 training. That was also a lesson learned that we could  
7 share with our other election officials, most of whom  
8 were shaking their heads that it even happened.

9 Q. Okay. Was there a statewide training that  
10 occurred as a result of this or just in that county  
11 with that clerk? I guess I should say that city,  
12 right, because it was a city administered position  
13 or --

14 A. The mistake was made by the county clerk.

15 Q. I get it. Okay.

16 A. The city reported its results to the county,  
17 and it's the county's job to take the results and at  
18 the County Board of Canvassers certify to us the  
19 results within the county for state and federal  
20 campaigns, state and federal elections. But the error  
21 was clearly on the county.

22 And so I believe there was an order issued  
23 by the board directing changes. Obviously the county  
24 was pretty proactive in this as well in terms of  
25 asserting the more control. The county is an -- the



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1 county clerk is an elected official, so there could be  
2 some tension between the county -- Waukesha County has  
3 a county executive, and so there could be some tension  
4 between two countywide elected officials as a result.

5 It was a politically sensitive issue within  
6 Waukesha County. And it was, you know, an example of  
7 where we, you know, identified a problem with the vote  
8 on that in our training throughout the state. And we  
9 did -- what we did do was make sure that there was what  
10 we called a training module developed from the County  
11 Board of Canvassers, the people who certify the results  
12 in the county, state, and federal elections. It's the  
13 step that occurs after the election when all of the  
14 results are reported in going over all the  
15 documentation that they have to review and put  
16 together.

17 You know, it gave us a good opportunity to  
18 ensure that there were -- another module that local  
19 election officials could have to say these are the  
20 expectations that we have for county clerks and their  
21 staff and the County Board of Canvassers.

22 Q. Okay. During your time with the GAB, it was  
23 required to file annual reports. I believe it was with  
24 the legislature; is that correct?

25 A. No. That was a change that came. Again,

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1 you know, 118 put an awful lot more legislative control  
2 over these two independent agencies, from the  
3 appointment of the commissioners to some very specific  
4 reporting requirements directly to the legislature.  
5 Prior to that, all state agencies, including Government  
6 Accountability Board and before that the State  
7 Elections Board were required to file what are known as  
8 biannual reports that are a summary of their reporting  
9 activity, their operational activity over that two-year  
10 period.

11 And we were on a different schedule because  
12 of the election cycle, so we actually did a calendar  
13 year report as opposed to a fiscal year report. Most  
14 agencies' biannual report would be -- correspond to the  
15 biannual budget from July 1st of an odd-numbered year  
16 through July 30th of an even-numbered year, whereas we  
17 would be January 1st of an odd-numbered year through  
18 December 31st of an even-numbered year for our report.  
19 That was one of the few exceptions, but it had more to  
20 do with the recognition of the operational cycle for  
21 elections. The campaign finance agency would be  
22 different than your standard state agency that  
23 operates -- derives most of its authority based on the  
24 biannual budget.

25 Q. All right. Section 5.05, paragraph 5(s),

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1 access to records.

2 A. I'm sorry. When you say paragraph 5 --

3 Q. Yes, 5(s) as in Sam. So 5.05(5)(s).

4 A. Oh, 5(s). Okay. I missed the 5.

5 Q. Yeah, which is the access to records piece.

6 That appears to be largely similar to when you were at  
7 GAB; is that correct?

8 A. That's right.

9 Q. Okay. I will tell you, and I may have done  
10 it -- well, let me ask this. Do you know if I can go  
11 on to the current Wisconsin election board's campaign  
12 site and download training materials?

13 A. I don't think you can.

14 Q. Yeah, I couldn't, so I didn't know if I was  
15 looking at it the wrong way.

16 A. Well, I haven't been -- there's a difference  
17 from when I was in charge of the agency that might --

18 Q. Okay.

19 A. -- be part of an expanded portfolio. I have  
20 not followed up with my former colleagues to see about  
21 that. I know under Wisconsin public records law you  
22 would be entitled to see that information, and people  
23 regularly accessed our training materials. But we did  
24 not -- I mean, we were developing protected access  
25 during my time there similar to what is there now and

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1 what I understand is in place for Firefly in Georgia.

2 Q. So when you say you were developing  
3 protective access, what do you mean by that?

4 A. Well, we were expanding our scope of our  
5 training, and we were trying to -- so one of the things  
6 that we were looking at and we had started working on  
7 was -- what's pretty much in place now was a portfolio  
8 of training materials that election officials could use  
9 for training that involved different platforms,  
10 interactive videos, guided reviews, things like that.  
11 And since most of the training was conducted either by  
12 our staff or the county officials or municipal  
13 officials, it also allowed people to have direct access  
14 to that.

15 And, for example, now as a poll worker, I  
16 don't have an access code, but before each election I'm  
17 required to have training. And I can go to an  
18 in-person training session, which all have been  
19 canceled for next week's election, or I can access it  
20 online. But also as a chief inspector, there's usually  
21 an in-person training, which would be -- which will be  
22 accessible online.

23 Q. And so I guess while you were at GAB,  
24 somebody could access the training documents, putting  
25 aside things about technology and ways to hook up the

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1 machines and all that kind of stuff.

2 A. That's right.

3 Q. But any person could access, for example,  
4 training on provisional ballots; is that correct?

5 A. That's right. We would have had -- at least  
6 most of the basic information would be directly  
7 available off the website and be easily downloaded and  
8 often was.

9 Q. I think we lost him for a minute.

10 A. I just said --

11 Q. Mr. Kennedy?

12 A. -- often was. I can hear you. Can you hear  
13 me?

14 Q. Oh, yeah. I thought you said option one,  
15 and then I didn't hear anything.

16 A. No. What I said was anyone could access the  
17 information, you know, training manuals for various  
18 materials and even videos, and they often did do that.  
19 And I know they often did that because part of our  
20 meetings with the Government Accountability Board and  
21 before that the State Elections Board, people would  
22 come in to ask questions about that or make  
23 recommendations about the training material.

24 Q. Okay. I'm going to ask you about Section  
25 5.05(5)(t), which is called "Guidance following binding

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1 court decisions."

2 A. Yes.

3 Q. It looks like that provision remained  
4 unchanged as a result of Act 118.

5 A. It was fairly recent. I'm wondering if it  
6 actually came into place as a result of the campaign  
7 finance law changes.

8 Q. No, no, no. Yeah, I'm wrong. I was reading  
9 the bill incorrectly. (5)(t) was created as part of  
10 Act 118.

11 A. Okay. And that --

12 Q. So let me ask this -- go ahead.

13 A. And that makes sense from my understanding  
14 of the political dynamics around that time.

15 Q. Okay. How would -- while you were at the  
16 GAB, if there was a binding court decision that came  
17 down impacting elections across the state, how would  
18 the GAB communicate that to election officials?

19 A. There would be a number of different ways  
20 that we would do that. I mean, we had the email  
21 contacts for all of our election officials. We have a  
22 corner on our website that was actually a publicly  
23 available corner called the Clerk's Corner. We would  
24 issue a press release so that things got covered on  
25 this, but we would communicate directly to the local

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1 election officials via email. We would post the  
2 information in the Clerk's Corner. Depending on the  
3 nature of that court decision, you know, there would be  
4 training materials that would be revised.

5 In the case some of the UOCAVA litigation,  
6 we were in direct communication by telephone with  
7 clerks. Usually, again, we were dealing with people  
8 who hadn't conformed their conduct to law more than  
9 anything else. And that limitation was not just  
10 municipal clerks. We would communicate to county  
11 clerks on this as well, even though their  
12 responsibility on elections is different than municipal  
13 clerks. But they often want to take a leadership role  
14 in organizing their county, making sure that they're  
15 uniform, so we certainly encourage that.

16 Q. Okay.

17 A. Obviously this -- (inaudible) requirement,  
18 so --

19 Q. I didn't understand that, sir. I'm sorry.

20 A. I just said, you know, that language was a  
21 new requirement that really didn't impact any of --  
22 anything that I did, so what I gave you was the  
23 description of how we handled the various court cases  
24 as we experienced them.

25 Q. Right. Yeah, and that's -- yeah, that's

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1 perfect. That's what I asked. I'm now looking for  
2 what is currently 5.05(6)(a), which is the advisory  
3 opinion piece.

4 A. Yes.

5 Q. And I can't tell right now if that was an  
6 addition from Act 118. Do you know offhand?

7 A. No. 6(a) was created with the 2007  
8 Wisconsin Act 1, the creation of the Government  
9 Accountability Board. There was -- there was a formal  
10 opinion process that was (6) prior to that that was a  
11 little less detailed about opinions. And (6)(a), I  
12 think, to a certain extent reflected some of the  
13 requirements that applied to the ethics board with  
14 respect to their ethics opinions, which had a different  
15 impact than ours did under elections prior to the  
16 creation of the GAB.

17 Q. Okay. How frequently would the GAB issue  
18 advisory opinions for elections during your tenure?

19 A. You know, not that often. It depended.  
20 Most of the opinions tended to be campaign finance  
21 related rather than election related. There were -- I  
22 mean, we had -- the opinions we issued in a given year  
23 were -- you know, would vary, but most of them tended  
24 to be campaign finance opinions that continued under  
25 the Government Accountability Board. So if we did 20



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1 opinions, then we had two or three, if any, that were  
2 related to election administration.

3 Q. Okay. And do you think I could get those  
4 from the PIO at the campaign commission -- or, excuse  
5 me, the election commission?

6 A. I think that's your best bet. That's where  
7 I would be going.

8 Q. All right.

9 A. I mean, they used to be published. You  
10 know, the state law library, they historically stored  
11 some of those documents as well. The biannual reports  
12 that you referred to contained a summary of all of  
13 those documents.

14 Q. Oh, okay. All right. I've got one more  
15 question on this statute. Then it's probably a good  
16 idea to take a short break, if that's okay with  
17 everybody. And specifically it's with one that we  
18 talked about before, which is 5.05(7), which is the  
19 administrative meetings and conferences provision.

20 A. Yes.

21 Q. My question is how often would those  
22 training meetings take place?

23 A. More often in odd-numbered years than in  
24 even-numbered years. The way Wisconsin's election  
25 schedule is set up, we have four elections in an

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1 even-numbered year and just the spring elections in the  
2 odd-numbered years, which are primarily local offices  
3 and judicial offices and school boards. And so a lot  
4 of the training went on between May and October of  
5 odd-numbered years.

6 It took a number of different forms. We  
7 played around with the format over the years, but as a  
8 general rule we would hold regional meetings, and there  
9 could be anywhere from 20 to 40 meetings across the  
10 state. During that time period, we at one point tried  
11 to hold two very large meetings where we expected like  
12 a thousand people to be present, one in Madison, one in  
13 Milwaukee. We learned very quickly we needed to be in  
14 the northern part of the state, that that wasn't going  
15 to be good enough for a day-long presentation. Most of  
16 our meetings tended to be a half-day meeting when we  
17 did these meetings, and they were primarily related to  
18 election administration.

19 And we also -- we didn't count this as this,  
20 but we had the Wisconsin County clerks meet three times  
21 a year, and we always had anywhere from one to three  
22 hours of their agenda at all of those meetings. The  
23 Wisconsin Municipal Clerks Association met -- had  
24 regional meetings that we would often send  
25 representatives to. And that occurred much more often

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1 after 2000 than it did prior to that time, although it  
2 did occur prior to that time. The Wisconsin Towns  
3 Association had an annual conference that we always had  
4 at least a half-day if not two half-day presentations.  
5 And there's some overlap in the sense that some members  
6 of the Town Association would be members of the  
7 Municipal Clerks, but the Towns conference was for all  
8 town officers, and it was a fairly large meeting. I  
9 mean, there are 1200 towns in the state, so we  
10 generally would have a fairly large meeting.

11 And the League of Wisconsin Municipalities  
12 also had an annual institute for their clerks and  
13 treasurers that we would participate in those  
14 conferences. Those were in addition to those annual --  
15 those other meeting provisions. I mean, that was just  
16 part of the relationships that we established with the  
17 professional organizations that represented various  
18 levels of government in the state.

19 MR. BELINFANTE: Okay. Well, folks, I think  
20 we've been going now for about an hour and a half.  
21 If y'all want to take just a five- to ten-minute  
22 break, does that agree with everybody?

23 THE WITNESS: So the plan would be to at  
24 11:45 your time, because I'm going to disconnect  
25 my phone during this period of time and call back

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1 in?

2 MR. BELINFANTE: Sure. That's fine.

3 THE WITNESS: Okay. So I'll plan on dialing  
4 back in at 11:45 Eastern.

5 MS. TANIS: Okay.

6 MR. BELINFANTE: Okay. I'm just going to  
7 mute mine and keep the line open. Thanks  
8 everybody.

9 MS. TANIS: Thanks.

10 (Thereupon, a recess was taken.)

11 BY MR. BELINFANTE:

12 Q. As part of your report, you reviewed a  
13 significant number of Georgia statutes under our  
14 election code; correct?

15 A. Yes.

16 Q. And you opine on what those statutes mean;  
17 is that fair?

18 A. Yes.

19 Q. All right. And did you read any Georgia  
20 cases? And by Georgia cases, I mean cases decided by  
21 Georgia courts.

22 A. I did not. I read a number of federal court  
23 decisions that came out of, I think, actions that  
24 prompted House Bill 316.

25 Q. Okay. And those cases are the ones

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1 identified on Appendix A in your expert report;  
2 correct?

3 A. Yes.

4 Q. Okay. If you could, let's turn to Georgia  
5 Code Section 2 dash -- or, excuse me, 21-2-50.

6 A. Okay.

7 Q. And just let me know when you get there.

8 A. 21-2-50. Okay.

9 Q. Yes.

10 A. And I'm looking at a printed version of  
11 this, just so you're aware.

12 Q. Okay. From the Westlaw?

13 A. It's West's Code of Georgia Annotated,  
14 Westlaw --

15 Q. That's it. Okay. Let's go and -- go ahead.

16 A. Sorry. I had point 2. Let me just -- let  
17 me back up a minute. Okay. Dash 50.

18 Q. All right. Let's go ahead and mark Georgia  
19 Code 21-2-50 as Exhibit 5.

20 (Whereupon, Defendants' Exhibit Number D-5  
21 was marked for identification.)

22 BY MR. BELINFANTE:

23 Q. All right. Subsection (a) there reads that  
24 "The secretary shall exercise all powers granted to the  
25 Secretary of State by this chapter and shall perform

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1 all duties imposed by this chapter, which include the  
2 following." So you would agree with me then that this  
3 code section is discussing the powers of the Secretary  
4 of State; right?

5 A. That's right.

6 Q. Okay. And paragraph (a)(11) addresses  
7 training. Do you see (a)(11) there?

8 A. Just a second. Two pages.

9 Q. Sure.

10 A. Yes, I see that.

11 Q. Okay. And would you agree with me that  
12 (a)(11) empowers the secretary to conduct training  
13 sessions for the training of registrars and  
14 superintendents of elections?

15 A. Yes.

16 Q. And the word poll watchers or the phrase  
17 poll watchers is not present in that statute. Isn't  
18 that right?

19 A. It is not, but I would assume that if you're  
20 training the clerks and the superintendents that you'd  
21 be training them about poll watchers as that's part of  
22 what they have to manage and it falls within the role  
23 of the election officer.

24 Q. Well, let's break that down. Is it your  
25 opinion that anything in that statute authorizes or

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1 mandates the Secretary of State to train poll watchers  
2 directly?

3 A. Poll watchers? No.

4 Q. Okay. And so you said that the -- is it  
5 your opinion that the Secretary of State is legally  
6 obligated to directly train poll watchers?

7 A. I think that -- I mean, you used the term  
8 poll watchers. I'm trying to understand. Is a poll  
9 watcher different from a person who runs the voting  
10 operations? To me a poll watcher is someone who is  
11 observing the polls, and I don't think the term poll  
12 watcher in terms of statutes refers to poll managers or  
13 the various people that do the work in carrying out  
14 elections.

15 Q. I'm sorry. Yeah, no, you made a good point.  
16 I mean poll workers, so let me ask the question again.  
17 Is it your opinion that the Georgia Secretary of State  
18 is legally obligated to directly train poll workers?

19 A. I think the Georgia Secretary of State is  
20 legally responsible for the actions of poll workers,  
21 which means that in the Secretary of State's training  
22 the Secretary of State is going to have to ensure that  
23 poll workers are adequately trained because their  
24 responsibility is for their actions.

25 Q. And what is the basis of your opinion that

1 the Secretary of State is legally responsible for the  
2 acts of poll workers?

3 A. It says a number of things. One, other  
4 portions of Georgia statute designate that individual  
5 as the chief election officer. The State Elections  
6 Board, which the Secretary of State is the chair, has  
7 to establish rules and procedures to ensure that  
8 elections are conducted uniformly, which means they're  
9 reaching down to the election level, not just the  
10 county level. If they're directly training county  
11 people, they have to give them the tools and  
12 information to train the people on the ground as  
13 opposed to in the office.

14 There are a number of federal provisions  
15 that specifically put the chief election officer --  
16 which the Secretary of State is designated in the  
17 statutes under various provisions to be the chief  
18 election officer responsible for federal law, notably  
19 the National Voter Registration Act, the Help America  
20 Vote Act, and I believe there are now provisions under  
21 UOCAVA that direct that.

22 I know from my experience and the experience  
23 working with other people administering elections in  
24 other states that it is the state election officer  
25 that's going to get sued under failure to comply with



1 UOCAVA, Help America Vote Act, the NVRA, or even the  
2 Voting Rights Act. You're going to go through that.  
3 So the responsibility is going to put on a duty to  
4 ensure that the people who are doing the work have the  
5 information, the tools, and the resources to do it to  
6 conform to the law.

7 Q. Is it therefore your opinion that the NVRA  
8 expressly imposes a legal obligation on the  
9 secretary -- or on the chief election officer of states  
10 to train poll workers?

11 A. The NVRA holds that chief election officer  
12 responsible. You can't be responsible for the actions  
13 of the locals if you haven't trained them. You know,  
14 there's not an express command that I recall, but there  
15 certainly is a tie between the responsibility that the  
16 chief election officer has, which in this case is the  
17 Secretary of State, and the performance of those duties  
18 which are actually going to be carried out by polling  
19 place level workers, county and state level workers,  
20 advanced voting location based workers.

21 Q. And is that the same analysis for the HAVA,  
22 the Help America Vote Act?

23 A. Yes.

24 Q. All right. And same analysis for UOCAVA?

25 A. Yes.

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1 Q. All right. You also said, I believe, that  
2 there are other portions of the Georgia code that  
3 render the Secretary of State legally responsible for  
4 the acts of poll workers, and can you tell me what  
5 those are, in your opinion?

6 A. Well, the fact that you have requirements  
7 to -- and these primarily come through the -- excuse  
8 me. They come through the state elections boards'  
9 requirements for uniformity, fairness, and  
10 effectiveness with the statutes that deal with setting  
11 out those guidelines. And the fact that the Secretary  
12 of State is the one that's then conducting the training  
13 down the road on this, the fact that the statutes say  
14 he -- say that office is the chief election officer  
15 including, you know, the general restriction that the  
16 Secretary of State can't be involved in political  
17 campaigns because of that person's role as the chief  
18 election officer, you know, certainly creates that --  
19 you know, that responsibility.

20 Q. And would you agree with me that the  
21 responsibility you're describing -- or let me ask this.  
22 Is it your opinion that the responsibility you're  
23 describing is implicit in the statute and not explicit  
24 in Georgia statutes?

25 A. Well, there's explicit requirements for the

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1 training. And while the training may not specifically  
2 talk about every actor, the responsibilities that are  
3 going to generate that training, you know, are  
4 certainly implicit in the definition of the secretary  
5 as the chief election officer and the assignment of  
6 that under various federal laws.

7 Q. Were you able to identify a single Georgia  
8 statute that expressly authorized and/or required the  
9 Georgia Secretary of State to train poll watchers --  
10 or, excuse me, poll workers?

11 A. The Georgia Secretary of State has to  
12 receive proof that they've been trained, although it  
13 doesn't name them. It just requires a number. So  
14 there are links tying the Secretary of State to the  
15 training of poll workers in that the counties have to  
16 certify that on such and such a date I trained this  
17 many people.

18 Q. Right. And you would agree with me, though,  
19 that's different in terms of receiving evidence that  
20 someone has been trained from actually providing the  
21 training, wouldn't you?

22 A. That's right.

23 Q. Okay. So, given that, would you -- were you  
24 able to identify any Georgia statute that imposed an  
25 obligation on the Secretary of State, an express

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1 obligation, to directly train poll workers?

2 A. I think the obligation is implicit within  
3 the responsibilities of the Secretary of State. It's  
4 not an -- you're correct, it's not an express one  
5 because it runs down through the counties in terms of  
6 the training.

7 Q. All right. So with that in mind, let's look  
8 at Code Section 21-2-70, we'll mark as Exhibit 6.

9 (Whereupon, Defendants' Exhibit Number D-6  
10 was marked for identification.)

11 A. Okay.

12 BY MR. BELINFANTE:

13 Q. And isn't it true that this code section  
14 addresses the powers of superintendents, election  
15 superintendents in cities and counties?

16 A. The powers and duties, yes.

17 Q. All right. And one of those duties in  
18 paragraph 8 is to instruct poll officers and others in  
19 their duties. Do you see that?

20 A. Yes, I do.

21 Q. Okay. So is it your opinion that Georgia  
22 law imposes a duty on city and county election  
23 superintendents to train poll officers?

24 A. Yes.

25 Q. And indeed one of the obligations imposed on

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1 those city and county superintendents in that same  
2 paragraph (a)(8) is to conduct that training so that  
3 elections are, quote, uniformly conducted, uniformly  
4 conducted being the last two words of that statutory  
5 provision.

6 A. That's right.

7 Q. Okay. If you could turn to Code Section  
8 21-2-99, and we'll go ahead and mark that Exhibit 7.

9 (Whereupon, Defendants' Exhibit Number D-7  
10 was marked for identification.)

11 BY MR. BELINFANTE:

12 Q. Just let me know when you get there.

13 A. I'm there.

14 Q. Okay. Great. Would you agree with me that  
15 this code section imposes the duty on election  
16 superintendents to, quote, provide adequate training to  
17 all poll officers and poll workers?

18 A. Yes, it does.

19 Q. And the only time the Secretary of State is  
20 mentioned in this code section is where the  
21 superintendent has to notify the secretary of training,  
22 who attended and who completed.

23 A. That's right.

24 Q. Is it your opinion that Code Section 21-2-99  
25 is the most specific statute with regards to the

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1 training of poll officers and poll workers in the  
2 Georgia election code?

3 A. It's more specific than the last statute.  
4 It doesn't tell them the content -- you know, the  
5 specific content. It just tells them what their duty  
6 is, so the superintendent still has to know what they  
7 have to provide. In terms of the content of the  
8 training, it just says it's their responsibility to get  
9 it done. And then the --

10 Q. Were you -- were you able to identify a more  
11 specific statute that speaks to the training of poll  
12 officers and poll workers in the Georgia election code?

13 A. I did not find one.

14 Q. Okay. Let's turn back to your report, which  
15 is Exhibit 1, and specifically on page 2. Sorry. I'm  
16 looking for my phone notes. Okay. Sorry. The first  
17 paragraph on page 2 of Document 167, page 1 on the  
18 individually numbered one, the first paragraph that  
19 starts "I've been asked to opine."

20 A. Yes.

21 Q. Okay. Can you read through the first -- or  
22 to the first semicolon just for the court reporter on  
23 that one.

24 A. "I have been asked to opine on the basic  
25 policies, procedures, and practices that the Georgia

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1 Secretary of State and the State Election Board must  
2 have in place in order to train county election  
3 superintendents, registrars, and poll workers to carry  
4 out their duties."

5 Q. Is that phrase, are those your words? Is  
6 that something that you put together?

7 A. I put that together. It was my  
8 understanding of what I was asked to do, but I don't  
9 recall that I got a specific written directive on this.

10 Q. Okay. When you say that the Georgia  
11 Secretary of State must have in place, what do you mean  
12 by must?

13 A. I mean that they have a responsibility in  
14 order to carry out their duties under various state and  
15 federal laws to have policies, procedures, and  
16 practices in place to ensure that election officials at  
17 all levels of government are trained so that they can  
18 carry out their responsibilities.

19 Q. And is a responsibility in what you just  
20 described the same as a legal obligation?

21 A. Well, it's a legal obligation in that you  
22 can be held accountable for failure to carry out that  
23 responsibility or the consequences of the failure to  
24 carry out that responsibility. It may not flow from a  
25 direct statutory command. It may flow from the

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1 responsibilities that you hold as the chief of -- or  
2 the person holds as the chief election officer.

3 Q. You've used that phrase a lot, chief  
4 election officer. And I know it's in the Georgia Code,  
5 and we'll get there, but would you agree with me that  
6 the election code, the Georgia election code, does not  
7 define the term chief election officer?

8 A. It simply assigns that responsibility to a  
9 particular office.

10 Q. And that word or that phrase, chief election  
11 officer, comes from at least HAVA where HAVA requires  
12 states to designate for purposes of HAVA a chief  
13 election officer; isn't that right?

14 A. It's part of federal law. It's -- I think  
15 the first provision that I saw it in was the National  
16 Voter Registration Act of 1993. I believe it wasn't in  
17 the original Uniformed and Overseas Citizens Voting  
18 Act, but that has been amended a number of times,  
19 including in the MOVE Act provisions after that in  
20 which the concept of a chief election officer has been  
21 incorporated.

22 I think, while I don't know if the term has  
23 been used in any of these court cases enforcing the  
24 Voting Rights Act, but that binds the holding states  
25 accountable for compliance with the Voting Rights Act,

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1 and those generally went through the person in charge  
2 of administering the state's elections. That wasn't  
3 necessarily something that you saw the poll workers  
4 being called into court for. So I think the term and  
5 the concept certainly predates HAVA on this, but I  
6 think a lot of states -- there was a big change in  
7 election administration after 2000 in terms of holding  
8 states accountable through their states' chief election  
9 officer.

10 I mean, it changed the relationship, I  
11 think, between in most cases counties and the states,  
12 some places like Wisconsin and Michigan and the New  
13 England states municipalities and counties and the  
14 states to make it clear that in order to achieve the  
15 goals of federal legislation, which really grew out of  
16 a sense of a need for uniformity and accountability,  
17 that it would be the states that would be standing in  
18 their shoes for the responsibility to make sure those  
19 laws got carried out.

20 Q. All right. But somebody -- it's  
21 conceivable, at least, that a state could designate one  
22 person to be the chief election officer for various  
23 federal statutes and still have a different person at  
24 the state level who is responsible for all training.  
25 Is that -- is that fair?

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1           A.       I think they can make those designations. I  
2 think there's a lot of different structures even within  
3 the secretary of states' offices. You have 37 states,  
4 I believe, where the person in charge of elections is  
5 the Secretary of State, but that person isn't always an  
6 elected official. Sometimes they're appointed by the  
7 legislature, sometimes by the governor. Sometimes they  
8 work with the board, and there are various divisions of  
9 duties that occur.

10                   You have a handful of states where it's the  
11 lieutenant governor that is the chief election officer  
12 and a handful of states where an agent of the board,  
13 such as my role I played. In other states, such as  
14 Illinois and Maryland and East Washington, D.C., where  
15 there was a board without a secretary of state  
16 responsible for that and a key person was designated  
17 for that, and that was the individual who would be held  
18 accountable for failure to comply with those  
19 provisions.

20           Q.       Also on page 2, which is page 1 of your  
21 report, Exhibit 1, you write that you have drawn on  
22 your experience and expertise as an administrator,  
23 consultant, and attorney actively involved in election  
24 administration at the state, local, and national level.  
25 Your experience as an administrator of elections is

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1 limited to Wisconsin; isn't that right?

2 A. I wouldn't say that that is true because as  
3 an administrator I also was involved with my colleagues  
4 across the state, worked very closely. So I had  
5 experience not administering their elections but  
6 certainly working with the administrators,  
7 understanding the challenges that they faced, the  
8 problems they had, the innovations.

9 So I would not limit my experience in  
10 administering elections just to the day-to-day  
11 activities that I did in my role in Wisconsin. It was  
12 certainly informed and enhanced by the interactions  
13 with my colleagues, my role with professional  
14 organizations that brought those together.

15 Then there was the National Association of  
16 State Election Directors in which I served as president  
17 in 2006. There was the Elections Center where I  
18 co-chaired national committees consisting of states and  
19 local election directors. So my experience is informed  
20 by a lot more than just my day-to-day duties carrying  
21 out Wisconsin's elections.

22 Q. Sure. And I guess my question was a little  
23 more simple than that. You've never held any positions  
24 of authority to administer an election in a state other  
25 than Wisconsin; is that right?

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1 A. That's right.

2 Q. Okay. And as a consultant, have you  
3 directly consulted any states regarding the  
4 administration of elections?

5 A. I have not been compensated for that at this  
6 point, no.

7 Q. If you could turn to page 4, Document 167,  
8 Exhibit 1. I've got a question. It's on the last  
9 paragraph of that page. It's page 3 of the report.

10 A. So this is my report you're referring to.

11 Q. Yes, yes.

12 A. Okay.

13 Q. That last paragraph -- oh, go ahead. I'm  
14 sorry.

15 A. I just wanted to be clear to you I have not  
16 written the exhibit numbers on my report.

17 Q. Okay. Yeah, the entirety of your report,  
18 including the CV, is Exhibit 1, just for the record.

19 A. Okay. And which page again now that  
20 we're --

21 Q. Sure. It's page -- on the report itself,  
22 it's page 3. For the court filing, it's Document 167,  
23 page 4.

24 A. Okay.

25 Q. The last paragraph on that page, the first

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1 sentence reads, "Wisconsin law requires the state  
2 elections agency, initially the State Elections Board  
3 and then the Government Accountability Board and now  
4 the Wisconsin Elections Commission, to conduct regular  
5 information and training meetings at various locations  
6 in the state for county and municipal clerks and other  
7 election officials." Do you see that?

8 A. Yes.

9 Q. I believe that quotes back generally to  
10 Wisconsin Code Section 5.05, paragraph 7. And my  
11 question is what is -- or who is included in other  
12 election officials?

13 A. I think it covers a large number of people.  
14 It would definitely include poll workers such as -- you  
15 know, who in Wisconsin we now call inspectors, that's  
16 the person in charge of the polling station, and the  
17 chief inspector. It includes special registration  
18 deputies, people who have been deputized by municipal  
19 clerks. At one time the Government Accountability  
20 Board could appoint those individuals.

21 It includes other -- basically anyone who  
22 has a role in a governmental capacity. I mean, they  
23 could be private citizens who have been appointed.  
24 Obviously poll workers, many of them are employees, but  
25 they're appointed by the local governing bodies. The

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1 clerk could appoint various people with different  
2 election day responsibilities, voting machine  
3 technicians, for example.

4 Q. Uh-huh (affirmative).

5 A. So the idea I believe -- I mean, this  
6 language has been there, as far as I know, since at  
7 least the time that elections were removed from the  
8 office of the Secretary of State, which is 1974. And  
9 the idea was to give the agency in charge of elections  
10 a broad range of authority in terms that it would make  
11 sure that it was doing some level of training.

12 Q. Okay. And the selection of poll workers, is  
13 that done at the city, town, and village level?

14 A. Yes, it is.

15 Q. Okay. And let me ask you, if you can, to  
16 look at Wisconsin Statute 7.15, which we'll mark as  
17 Exhibit 8.

18 (Whereupon, Defendants' Exhibit Number D-8  
19 was marked for identification.)

20 A. I have 7.15.

21 BY MR. BELINFANTE:

22 Q. Okay. Here, the first paragraph, paragraph  
23 1, says, "Each municipal clerk has charge and  
24 supervision of elections and registration in the  
25 municipality." It may be that there's a code section

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1 specifically on towns and villages, or is it that this  
2 municipal clerk would be defined as including the  
3 clerks in towns and villages?

4 A. I think if you were to go to the definitions  
5 in 5.01, it would define a municipal clerk as a town,  
6 city, or village clerk. And it would include for  
7 election purposes the director of the Milwaukee City  
8 Board of Election Commissioners, but there's a separate  
9 parallel statute to 7.15 related to Milwaukee.

10 Q. Okay. Got it. And so paragraph -- in this  
11 Code Section 7.15, paragraph 1(e) as in Edward,  
12 identifies one of the duties of these municipal clerks  
13 as training election officials in their duties. Do you  
14 agree with that?

15 A. Yes.

16 Q. So in Wisconsin you have expressed statutory  
17 language both in 5.05(7) and 7.15 that empowers and/or  
18 mandates both the state and the municipal governments,  
19 and I mean that as defined in Wisconsin, to train poll  
20 workers. Is that an accurate statement?

21 A. Well, I would not say that it's explicit  
22 that Wisconsin has to train poll workers. I think it's  
23 implicit with the other election officials, but it's  
24 clearly a responsibility that encompasses poll workers.

25 Q. I see. Okay. I'll pull it up at some

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1 point, but you may know off the top of your head. Does  
2 the Wisconsin Statute 5.01 define the term other --  
3 hang on, sorry -- other election officials or election  
4 officials?

5 A. I think there might be a definition for  
6 election officials.

7 Q. Okay.

8 A. But I don't -- again, I'd have to pull it  
9 back up.

10 Q. Yeah. Okay. But during your time at the  
11 GAB, at least you interpreted other election officials  
12 to include poll workers?

13 A. I did.

14 Q. Okay. On page -- going back to your report,  
15 page 5 of the court document, page 4 of your report --  
16 I'm looking for it, but let me just ask the question  
17 while I'm still looking because you probably don't even  
18 need to refer to it. At one point in your report you  
19 talk about an article or paper that you helped write  
20 with the National Academies of Sciences, Engineering,  
21 and Medicine titled "Securing the Vote." Your  
22 involvement with that paper or article, there were  
23 several other individuals who assisted with that;  
24 correct?

25 A. That's right. There were -- the National



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1 Academies of Sciences had brought in a number of  
2 academics, and there were three election officials on  
3 that, including myself.

4 Q. Okay. Was there a part of that paper or  
5 that report that you focused on?

6 A. Well, I focused on all of it.

7 Q. Okay.

8 A. At one point as we were preparing the final  
9 report, we had broken it down into various areas. And  
10 I vetted two different sections that I and Professor  
11 Juan Gilbert from Florida were responsible for putting  
12 together. I authored the initial drafts of those.  
13 That was commented on by Professor Gilbert, and then I  
14 took those comments, incorporated them. And he  
15 contributed to some of the examples that went into the  
16 two sections of the report.

17 The full Committee on the Future of Voting  
18 it was called, you know, vetted that entire report. So  
19 we had, you know, political scientists at Stanford and  
20 MIT and computer scientists looking at that as well,  
21 the whole committee. And this was -- this report was  
22 put together after about five days of meetings of  
23 gathered information from election officials and  
24 national security officials and individuals. I mean,  
25 we spent about a year and a half gathering the

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1 information and then putting this together. So a  
2 lot --

3 Q. Which sections -- which sections of the  
4 report did you write? What were the topics?

5 A. Election training was one, and I think  
6 ballot design was the other. I know for sure -- yeah,  
7 those were the two.

8 MR. BELINFANTE: Okay. Let me do this, if I  
9 could. I'll go off the record for half a second.

10 (Thereupon, an off-the-record discussion was  
11 held between the parties.)

12 BY MR. BELINFANTE:

13 Q. Mr. Kennedy, I'm looking at page 5 of your  
14 report, page 5 being the court's designation, page 4  
15 being the one at the bottom of the page. And -- no, I  
16 lied. Page 5 is the one at the bottom of the page and  
17 page 6 is the report designation in your report. And  
18 my question is based on the second to last paragraph.  
19 The second sentence reads, "However, state and federal  
20 law, along with the evolution of election  
21 administration since the 2000 presidential election,  
22 suggest that there is a threshold foundation for  
23 training and holding election officials accountable  
24 that must be in place under the direction of the chief  
25 state election official to ensure elections are

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1 administered in a fair, uniform, and transparent  
2 manner." Do you see that?

3 A. I see that.

4 Q. Okay. You say that "state and federal law,  
5 along with the election" -- excuse me -- "evolution of  
6 election administration since 2000's presidential  
7 election suggests there's a threshold foundation."  
8 What there did you mean by suggest?

9 A. I mean that experience has taught us and the  
10 laws that have been put into place and modified during  
11 this time have raised, I think, the awareness of  
12 necessity for people like the election officer to have  
13 a more rigorous accountable training program in place  
14 for all the election officials within that state to  
15 ensure that you are protecting the voting rights of the  
16 citizens, which is usually the whole reason why you  
17 have elections is to permit the citizens to participate  
18 in the selection of the individuals who are going to be  
19 running their government.

20 And I mentioned this before, but there was a  
21 sea change in what happened in 2000. Part of it was a  
22 reaction to the failure of the states to effectively  
23 respond to the 1993 NVRA. The 2000 election was really  
24 a watershed in showing the problems that occurred with  
25 local election officials not carrying out their

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1 responsibilities, the lack of uniformity in a number of  
2 states, which we saw this in I think the general  
3 awakening of perception across the country that they  
4 don't do things the same in Florida as they do in  
5 Michigan.

6 And it was something that Congress responded  
7 to, but in election officials there was a recognition  
8 that you have to really face the responsibility. There  
9 were a whole range of commissions that were put  
10 together. There was the Carter-Baker Commission, for  
11 example, that put together a whole series of  
12 recommendations on how to improve elections.

13 As I indicated, I served as the co-chair of  
14 two organizations -- or two different committees in  
15 2001 and 2005 that put together a report on what this  
16 meant as we saw the changes coming by the development  
17 of the Help America Vote Act, which imposed  
18 responsibilities. And one of the big things it did is  
19 it changed, you know, in a formalized manner the  
20 relationship between state government and local  
21 election officials to ensure that they were going to be  
22 accountable for this. And I've made reference to this  
23 throughout the day.

24 And this is, you know, part of my experience  
25 working on these past boards, working with members of

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1 Congress and their staff with the Help America Vote Act  
2 that we put together to recognize that we're going to  
3 look at elections differently. It's still been my  
4 experience in Wisconsin -- I mean, prior to 2000 my  
5 focus was campaign finance enforcement. We ran  
6 elections, but it did not get the same level of  
7 attention that it gets now.

8 Q. But would you agree with me that there's  
9 nothing in the express language of the Help America  
10 Vote Act that imposes an obligation on chief election  
11 officers to train poll workers?

12 A. No, I would not.

13 Q. Okay. Where is that?

14 A. HAVA Section 101 specifically provides  
15 funding for that purpose, to train officials. I can't  
16 give you the exact cite because I'm so used to speaking  
17 about it in terms of the HAVA section. It is  
18 referenced, though, in my report where I --

19 Q. Yeah.

20 A. And the footnote will give you the exact  
21 U.S. code cite to that. But it provides that -- in  
22 order to implement the Help America Vote Act, it  
23 provided enough money so that you can train, and it's  
24 the whole range of election officials, including poll  
25 workers.

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1 Q. Right. But it doesn't -- I mean, you also  
2 describe in that same section we're looking at that  
3 there's a threshold in foundation. Help me -- how does  
4 one identify what that threshold --

5 A. How does one identify what that threshold  
6 is? You look at the requirements in the state code of  
7 what needs to be done to carry out an election. You  
8 look at the federal framework that surrounds that, the  
9 National Voter Registration Act, the Voting Rights Act,  
10 the Help America Vote Act, the UOCAVA, the  
11 Accessibility Act for the Elderly and Handicapped.  
12 That gives you the foundation of what needs to get done  
13 and establishes your threshold of what the  
14 responsibilities are going to be. And --

15 Q. But -- go ahead.

16 A. Well, I think I've made my point.

17 Q. Is there a single document or gold standard  
18 promulgated by an organization that sets forth, you  
19 know, what -- if I'm looking to get the gold standard  
20 in training and I'm looking to follow -- define what  
21 that threshold in foundation is, is there a singular  
22 document I can go to or a standard, or is there not?

23 A. I don't think that there is -- I mean, I  
24 have not -- I mean, this is why I was talking with  
25 various people I know who are involved in this to see

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1 if someone had synthesized these things differently  
2 from my experience on this. You know, as chief  
3 election officials, we see our vulnerabilities in the  
4 lawsuits. We see our responsibilities in the duties  
5 that we have to carry out, and that's, you know, what  
6 informs us. You know, it's a very diverse group, and  
7 it's also state specific. So --

8 THE REPORTER: I'm sorry. You're cutting  
9 out on me.

10 A. I'm sorry. I said it's a very diverse group  
11 of election officials from across the country, and it's  
12 also going to be very state specific as far as how they  
13 carry that out. But what I'm doing as an expert  
14 witness here is gathering my experience over 40 years  
15 recognizing what the responsibilities that we all share  
16 are as chief election officer based on my experience,  
17 based on what I've seen in other states, based upon  
18 what I've learned from my colleagues, based on what  
19 I've gotten feedback from, whether it's elected  
20 representatives at the state level or the congressional  
21 level.

22 And my opinion is there is a threshold  
23 basis, and it consists of establishing a very rigorous  
24 program that touches every election official under  
25 the -- you know, within that structure, from the chief

1 election officer, the board members, down to the people  
2 who carry out the actual duties on election day,  
3 because it's the chief election officer that's going to  
4 get sued.

5           It was not unusual for me when I'd get  
6 pushback from the locals to say, "If I'm in court,  
7 you're going to be sitting next to me," because the  
8 people who would be holding my feet to the fire legally  
9 were usually not doing it for -- they may be doing it  
10 for institutional provisions I didn't have in place,  
11 but they would be doing it for specific failures that  
12 may occur right down to the polling place or advanced  
13 voting location.

14           And it's that accumulation of what's  
15 occurred since 2000, I think, that establishes the  
16 threshold in foundation when you're looking for what  
17 should be in place. And I think this is something  
18 that's embraced in practice across the country. I  
19 don't know if everybody gets it done right or they get  
20 it mostly right, but they certainly are trying to make  
21 sure that they are taking the lead. When you're the  
22 chief election officer, you're not just a figurehead.  
23 You are a leader, and you need to set the tone for how  
24 elections are going to be conducted within that space.

25           Q.     I think you just said that the training has



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1 to be rigorous. Are there metrics to determine that?  
2 I mean, it's one thing to say it needs to be rigorous.  
3 It's another thing to figure out how to measure it, and  
4 I guess my question is on that second point.

5 A. Well, one of the best ways to measure it is  
6 to look at the complaints that you receive and what you  
7 do with those complaints when you receive them. And we  
8 talked about the problem in Waukesha County at the  
9 county level and how we responded with a more detailed  
10 explanation other than just the statutory language  
11 about what the duties were for the county clerk and the  
12 County Board of Canvassers in certifying election  
13 results after an election.

14 So, I mean, I don't think we have IEEE  
15 standards like you might have for a number of these  
16 across the country, but you certainly -- I mean, that's  
17 part of the reason why the Election Center exists was  
18 to broaden election officials' exposures to what's  
19 essential in conducting training.

20 THE REPORTER: Can you repeat that last  
21 sentence?

22 A. I said part of the reason why the Election  
23 Center exists is to broaden election officials'  
24 exposure to the essential elements of a training  
25 program so that that can be implemented within their

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1 jurisdiction.

2 BY MR. BELINFANTE:

3 Q. Is it your opinion that Georgia has a  
4 rigorous training program in place?

5 A. They have a -- they have a fairly large  
6 portfolio, but it seems to be pretty descriptive. My  
7 observation of what Georgia does is it says this is  
8 what you're supposed to do, this is how you do it. It  
9 doesn't -- I don't think it gets very detailed except  
10 on the technical aspects of it. You know, I only say  
11 that based on screenshots. I think -- but even that's  
12 not necessarily very detailed other than here's an  
13 example.

14 I don't think, and I said this in the  
15 report, that the training really provides a context for  
16 that training, in other words, why are we doing what  
17 we're doing and who are we doing this for. It's  
18 missing the what in the how to do it. There is a lot  
19 of that description, but what are the consequences if  
20 we don't do it, why is this important, and who are the  
21 beneficiaries of this, who -- what's our goal to  
22 accomplish here is not part of it. It's more get it  
23 done.

24 Q. In that same sentence that we talked about,  
25 you talk about that election -- chief election --

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1   excuse me -- chief state election officials need to  
2   ensure that elections are administered in a fair,  
3   uniform, and transparent manner. My question is on  
4   uniform. Is it -- do you believe that there's always  
5   going to be some level of variance in a statewide  
6   election?

7           A.     It depends on what we're talking about in  
8   terms of variance. I mean, a person who comes to a  
9   polling place in the most rural area or who comes to a  
10   polling place in the most urban area with the same  
11   problem ought to be getting treated in the same manner.  
12   If they show up at the wrong location or whatever it  
13   is, there should be clear instructions about what's to  
14   happen, or if the forms that they've had to complete,  
15   whether it's for an absentee ballot, a provisional  
16   ballot, or the sign-in procedures or the type of  
17   identification need to be handled uniformly. How you  
18   access the polling place may vary in terms of the  
19   design of the location.

20           So the variance can't go to the assessment  
21   of someone's eligibility or the treatment of their  
22   documents. It probably has to go to more practical  
23   aspects. I mean, one example is observers at a polling  
24   place might be treated differently because of the  
25   structure of the polling place.

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1           You know, one of the legal changes that was  
2       contested and was talked about in that One Wisconsin  
3       lawsuit was how far should an election observer be from  
4       the poll worker where the poll worker is interacting  
5       with a voter to observe what's going on. And there was  
6       a dispute about what was put together by the State  
7       Elections Board and then the Government Accountability  
8       Board based on the consultations of observer groups  
9       from political parties and local election officials on  
10      what the legislature deemed to be appropriate, and that  
11      came up in the lawsuit. And, you know, there was a  
12      recognition that there's a difference on how you treat  
13      observers in different polling places based on where  
14      you put them or --

15           (Thereupon, an off-the-record discussion was  
16      held between the parties.)

17      BY MR. BELINFANTE:

18           Q.     Were you done with your answer?

19           A.     I believe so.

20           Q.     Okay. All right. In your experience in  
21      Wisconsin when you were legal counsel and administrator  
22      to the GAB, other than what we've talked about with  
23      UOCAVA, were there other incidents where counties would  
24      have some variance in a substantive issue, I mean, even  
25      whether it's how a provisional ballot was treated or

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1 how something else was done differently in one county  
2 or one city versus another?

3 A. There were some practices that were  
4 different. When you ask that question, I'm trying to  
5 find out are you talking about for people who didn't  
6 comply with what the legal requirements were or for  
7 people who did something slightly different because it  
8 made more sense to them?

9 Q. Well, let's start with the second, they did  
10 something slightly different because it made more sense  
11 to them. Did that happen?

12 A. That happened, and it was actually something  
13 that we recognized in our training. Probably the best  
14 example of that would be the check-in process for  
15 voters. We encouraged it. It wasn't required. The  
16 statute did not authorize it, but we had many  
17 municipalities that would have one of their poll  
18 workers serve as a greeter. In other words, when some  
19 -- as people came in or lines formed, this person's  
20 sole responsibility was to try and get the voters  
21 organized as they come in, if they needed to register  
22 at the polls -- because Wisconsin has election day  
23 registration -- get them identified, make sure that  
24 they have the information, make sure they're at the  
25 right polling place. That wasn't required anywhere,

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1 but it was -- it varied among municipalities, and  
2 people liked it.

3           Checking in itself, in Wisconsin you have to  
4 come in in front of two poll workers and identify  
5 yourself and show the identification. And depending on  
6 the size of the polling place, they may break the poll  
7 books down, so A to L and M to Z or A to H and I to R  
8 and S to Z. They were allowed to do that. Sometimes  
9 there was a second person who checked the ID sitting  
10 between the two people who are checking the voters in.  
11 But these were process issues, not -- they were not  
12 differences to the, you know, is this a valid ID to  
13 show at the polling place.

14           Q. Did you ever have in your experience there  
15 differences in substance, not just process? I'll give  
16 you as a hypothetical somebody would require a  
17 provisional at one polling place where the other they  
18 did not for some reason. I mean, that's just an  
19 example, but you get the idea, something more  
20 substantive?

21           A. Yes. And that's why I asked you to make the  
22 distinction originally because there were times before  
23 we had photo ID requirement, we had people asking for  
24 photo ID when they shouldn't have asked for photo ID.

25           Q. And in your -- go ahead.

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1           A.       It was forbidden under the law at the time,  
2       and so that was something that we had to address. If  
3       we got a complaint on that, we followed up on that  
4       immediately. There were probably bigger issues that  
5       would, you know, come out of an election where we would  
6       focus -- we would take that information and try and  
7       address it.

8                   Hopefully we could adapt it statewide if  
9       necessary, such as the example I gave you with the  
10      County Board of Canvassers, but it's an evolving  
11      process with election administration to identify the  
12      problems. Yes, poll workers made mistakes. County  
13      election officials made mistake. Our office made  
14      mistakes.

15                  And once those were identified, the idea was  
16      to make sure that they were corrected and that they  
17      were acted on and that that was something that involved  
18      the whole range of the election community, and we  
19      wanted to make sure that the public knew that those  
20      issues had been corrected. Following the recall  
21      elections in 2012 -- I'm sorry. I'm talking like you  
22      would know what a turbulent time we had in Wisconsin in  
23      2011 and 2014.

24           Q.       Yeah, I remember from afar.

25           A.       Yeah. Well, I mean, our capitol was

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1 surrounded by a hundred thousand people protesting some  
2 of the political issues there, and we were in the  
3 middle of that. That drove that supreme court election  
4 we were talking about, and it drove a series of recall  
5 elections later that year and then the recall of other  
6 officials, including the governor the following year.  
7 But my testimony that you've cited came out of the  
8 recall election.

9 But in the conduct of some of those  
10 elections we found problems in Racine County, for  
11 example, that got a lot of attention. And we were back  
12 in Racine County immediately after that election to do  
13 specific training for those poll workers to work with  
14 the officials on ensuring that they had a better  
15 training program in place and observing future  
16 elections, and we made sure that the public knew that  
17 we had acted on that.

18 Q. And is it your opinion that those variances  
19 or errors or decisions rendered those elections  
20 unconstitutional?

21 A. Well, in some cases there was a deprivation  
22 of someone's right to vote, which gave them rise to a  
23 lawsuit on that. I mean, probably a better example of  
24 that was when I first started before we had HAVA and  
25 the NVRA and we had poll workers who were asking for



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1 proof of citizenship because someone didn't look  
2 American. And the person did the next best American  
3 thing when they couldn't cast their ballot. They hired  
4 a lawyer, and they sued the poll workers and the town  
5 of Neenah and the State Elections Board on that. And  
6 that became an opportunity to train on how do you  
7 handle concerns about a voter's qualifications, whether  
8 it's citizenship, age, residence.

9 So the answer is yes. It may not void the  
10 election, because that power is going to rest with the  
11 courts generally. But it certainly, you know, puts our  
12 office in liability for what they did. Now, we  
13 happened to have training material that told them how  
14 to handle that process, and the court found no  
15 responsibility on our end. But it didn't change what  
16 we did with that information, which was to ensure that  
17 this didn't happen again.

18 Q. All right. Is it fair that your report  
19 basically compares how things were done in Georgia to  
20 how things are done or were done in Wisconsin under  
21 your tenure at the GAB?

22 A. No, I would not characterize it as a  
23 comparison between the two states. I would say that --  
24 and I made a lot of references to Wisconsin law because  
25 that informed my opinion as an expert as to why things

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1 need to be done or how they could be done better. The  
2 fact that there's slight variances in the law, I mean,  
3 the two training texts that we compared were not that  
4 different between Georgia and Wisconsin in terms of  
5 telling the chief election officer to call officials  
6 together at various locations within their discretion.  
7 But, I mean, what I learned in that experience, along  
8 with others, was how you get to what's the basic  
9 foundation for a comprehensive training program and  
10 what are the thresholds you have to get to to ensure  
11 that as a chief election officer you're doing your job,  
12 not just your state statutes.

13 Obviously, I mean, I thought I did a fairly  
14 good review of Georgia's requirements, and I've lived  
15 with Wisconsin's requirements as they've changed over  
16 the years. And it basically informs my opinion as to  
17 where Georgia measures up and where it falls short, and  
18 that's what my opinion comes from. It's not a  
19 comparison between Georgia and Wisconsin. It's drawing  
20 on my experience from Wisconsin.

21 And, as I've pointed out, there's a lot of  
22 other areas of experience involving training to say  
23 that Georgia does not have in place a training program  
24 that ultimately is going to protect voters. And that's  
25 manifested in the complaints I've looked at, you know,

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1 and manifested in some of the expert reports that I  
2 looked at.

3 Both Ken Mayer and Dan Smith, you know,  
4 specifically faulted the Georgia Secretary of State  
5 training protocols with their county officials with  
6 respect to the quality of the statewide voter  
7 registration system. And the complaints I looked at, a  
8 large number of them had to do with am I registered to  
9 vote or how do I cancel my registration or where do I  
10 vote, which is going to flow through to the counties or  
11 to the polling places.

12 Q. Well, I guess I'm looking at the cite of  
13 authorities, and I'm seeing Wisconsin statutes, federal  
14 statutes, Georgia statutes, and then some websites. So  
15 what other states did you take into comparison when  
16 looking to determine whether Georgia's training is  
17 sufficient?

18 A. I did not specifically look at the training  
19 programs in other states to compare them to Wisconsin  
20 or to compare them to Georgia. I did draw on what I  
21 learned at the Election Center going through the  
22 certified election registration and the administrator  
23 certification process. I looked at a wide range of  
24 training information that we were exposed to with the  
25 National Academy of Sciences. I looked at my

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1 interaction with other states and their training  
2 programs.

3 In the National Association of State  
4 Election Directors, one of the big topics we had after  
5 2000 is what are we doing to implement training. I  
6 mean, I was very familiar with how Georgia involved  
7 Kennesaw State in 2002 with getting a -- establishing a  
8 uniform voting system, which by necessity requires a  
9 very detailed training from poll workers all the way up  
10 to the Secretary of State's office on how that system  
11 is going to work and various accountability mechanisms  
12 that need to be put into place. A lot of --

13 Q. Where was the -- go ahead. I'm sorry.

14 A. I was going to say --

15 Q. No, no, go ahead.

16 A. -- I looked at Georgia as a starting point  
17 at that point, whether that would be something that  
18 would help them with their training. I mean, I know we  
19 looked at whether or not even incorporating our  
20 technical colleges, particularly in terms of voting  
21 equipment support for local election officials.

22 Q. All right. Let me ask this, and I'll try to  
23 ask it in a relatively clear way. Is it your opinion  
24 that the training provided in Georgia by the state  
25 itself violates the United States Constitution?

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1           A.     I think the consequences of the shortcomings  
2 of the program lead to voters losing their opportunity  
3 to participate in the elections. And that comes  
4 through in the complaints that people have, and I think  
5 it certainly flows from the fact that not enough  
6 information and not enough focus is given to how do we  
7 treat provisional ballots and absentee ballots and how  
8 do I properly manage my responsibilities -- by my, I  
9 mean the county official -- with respect to the Georgia  
10 voter registration system.

11                     The outcomes that surprised me are any  
12 complaints I got about I can't find that information,  
13 about I just registered at the Department of Driver  
14 Services, or whatever the DDS acronym is for, and now  
15 the information --

16           Q.     Hu?

17           A.     -- doesn't show up on the website or I've  
18 been registered, now I'm told I'm not there anymore,  
19 what happened. There's an awful lot of those  
20 complaints consistently throughout the process. And I  
21 look at the expert reports that point out the failings  
22 in that area, and that directly impacts people's  
23 constitutionally protected right to vote.

24           Q.     Anything other than voter registration  
25 errors that you believe training has led to an

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1 unconstitutional result?

2 A. I talked about the treatment of absentee  
3 voting, provisional ballots. I mean, those seem to be  
4 issues that came up -- excuse me -- in the complaints.

5 Q. And when you say the complaints, I probably  
6 should have clarified this earlier. You're referring  
7 to complaints coming in to the State Election Board?

8 A. That's right. Chris Harvey said that all  
9 complaints went through him. There were a large number  
10 of complaints. I'm sure I didn't see all of them by  
11 any means, but I had a pretty good flavor after looking  
12 at hundreds of them and that, you know, this person was  
13 complaining about this too. I did look at a number of  
14 the things also that -- you know, the minutes and  
15 agendas that were in front of the State Elections Board  
16 with respect to some investigations that were being  
17 conducted and the reports that were being made.

18 Q. Would you agree with me that even if a state  
19 implemented the most perfect -- or I shouldn't say  
20 that. Would you agree with me that even if a state  
21 implemented unquestionably gold standard training that  
22 there could still be errors in an election system?

23 A. Well, the election system is run by a human.  
24 And I've said this often in my training that, you know,  
25 you expect that there are going to be errors, which is

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1 why you do the best you can with the training. You try  
2 to make it as thorough and rigorous and redundant, if  
3 necessary, as possible. And it's how you respond to  
4 those that is going to be -- to the failure that's  
5 going to be a key. You build on that to make sure that  
6 it doesn't happen again.

7 People are going to make mistakes. I think  
8 no election is going to be perfect. But, you know, our  
9 role as the chief election officer is to lead in that  
10 area and make that the goal and give the election  
11 officials working in your state the tools and the  
12 resources and the confidence to take care of that. I  
13 think I've acknowledged a number of shortcomings that I  
14 experienced in Wisconsin at the local and county level.

15 Q. We covered that. On page 7 at the top of  
16 the page, page 6 at the bottom of the page of your  
17 report -- and I think you've largely answered this, but  
18 in the second to last paragraph, I guess the last full  
19 paragraph, the last sentence reads, "A comprehensive  
20 training program for election officials and poll  
21 workers is essential for ensuring voting rights are  
22 protected." Do you see that?

23 A. Yes.

24 Q. All right. And, again, is there a specific  
25 statute that says that, or is that a conclusion you

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1 were drawing from the statutes that you identify?

2 A. Well, it comes from the statutes that I  
3 identified. It comes from my experience on this. It  
4 comes from -- we've talked about the complaints, or  
5 I've talked about the complaints that have filtered up  
6 to the Georgia Secretary of State's office, the  
7 complaints I experienced in my office, and even the  
8 fact that the Help America Vote Act put an emphasis on  
9 training following the 2000 election debacle where we  
10 saw big failures.

11 And it wasn't just the voting equipment in  
12 Florida. One of the biggest issues that came out of  
13 the 2000 election was the failure to properly register  
14 voters under the National Voter Registration Act and to  
15 account for people who claimed they were registered and  
16 showed up at the polling place. That was a big issue  
17 that, you know, in the 2000 election didn't get quite  
18 the national news media that people looking at punch  
19 card voting got in Florida.

20 Q. Yeah, I guess my question is a little more  
21 specific than that, and it's when you say that it's  
22 essential to ensuring voting rights are protected and  
23 those rights are arising out of the statutes you've  
24 identified, do those statutes, do those acts, Voting  
25 Rights Act, the National Voter Registration Act,

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1 UOCAVA, HAVA, the Voting Accessibility for the Elderly  
2 and Handicapped Act, do any of those statutes expressly  
3 say that there must be training done or that without  
4 such training there would be a violation of those  
5 statutes?

6 A. They don't expressly say that. But without  
7 the training, you know there will be a violation  
8 because people won't know what they're supposed to do  
9 or they'll do it incorrectly. So without the training,  
10 you're going to have a violation. I mean --

11 Q. In your work with Congress on the Help  
12 America Vote Act, did you try to get an express  
13 training requirement into the statute?

14 A. No, I did not. I didn't.

15 Q. Page 8 of the report using the court's  
16 designation, page 7 for yours, the last paragraph says,  
17 "Poll workers do their work a few times a year. They  
18 need to be thoroughly trained in their election day  
19 responsibility and brought up to date on changes since  
20 the last time they worked." Do you see that?

21 A. I do.

22 Q. My question is on the word thoroughly and  
23 how specifically does a state determine if the training  
24 they're providing is sufficiently thorough to satisfy  
25 what you're articulating here.

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1           A.     Well, a state looks at what are the duties  
2     that the poll worker has. It looks at what's the  
3     training that's been in place. It looks at where have  
4     the errors been with respect to those processes and  
5     what has changed in that process. That's how you  
6     determine -- those are all elements of determining the  
7     thoroughness of the training.

8           Q.     What are the metrics the state can use to  
9     know if its done a good job?

10          A.     There's a number of metrics that they can  
11     use. They're probably qualitative than more  
12     quantitative. One quantitative one is the measure of  
13     complaints that come out of a particular activity,  
14     whether the complaint's related to the quality of voter  
15     data in the county, what are the complaints about, how  
16     elections were conducted in a particular polling place  
17     or a particular county, that's definitely going to be  
18     one of the biggest quantitative measures that you can  
19     look at.

20                 You can look at the quality of the  
21     paperwork, is it properly completed and well  
22     documented. You look at observations that you can make  
23     either directly or through other observers as to how  
24     things perform. So there's a wide range of ways that  
25     you can assess that. You can look at the accuracy of

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1 the data. We see that -- you know, in Wisconsin one of  
2 the things we did, we had three different measures of  
3 the number of voters that came out of a polling place  
4 which gave us an indication of how well the poll  
5 workers were doing their jobs.

6 Q. And is there a -- I would normally say  
7 industry wide, but I realize we're not talking about an  
8 industry per se. But is there a standard or is there  
9 scholarship that you turn to or regulations to come up  
10 with these different metrics, or is this just something  
11 that -- not just, but is this something that you've  
12 done on your own based on your experience?

13 A. Well, it's based on my experience, but it's  
14 also based on what I've learned in, you know, the  
15 classes that I've taken through the Election Center  
16 that are actually taught by Auburn professors. It's  
17 drawn on what I've learned from other election  
18 officials at the National Association of State Election  
19 Directors.

20 I have read -- and I can't point to a  
21 specific paper on training, but I've read a lot of  
22 research papers working with the Election Science and  
23 Research conferences that I've participated in in  
24 Madison and Philadelphia, and there's one in Florida  
25 coming up this summer maybe. The original one was in

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1 Portland in 2017 looking at my work with the Pew Center  
2 on the States. And we developed not only the  
3 Electronic Registration Information Center protocols  
4 but the performance index of elections that's now run  
5 by MIT that was developed working on committees there.  
6 All of those provide insight to me and which I don't  
7 think I would be the only person who's been in this  
8 business for a while who would come up with these kind  
9 of strategies or analysis.

10 Q. Can you cite me to some others that would  
11 and have published on it?

12 A. I think you could look at the Election Law  
13 Journal to see if there's anything involved. I can't  
14 point specifically to any articles there. But, I mean,  
15 there's a raft of publication on election  
16 administration that has come out. I did not go looking  
17 for that for these purposes. I really focused on what  
18 was in front of me, the Georgia statutes, the Georgia  
19 practices, the materials that were available to me, and  
20 drew on my 40 years of experience.

21 Q. I tell you what. I am at a decent stopping  
22 point. I don't know if you want to -- it's 1:15. I  
23 think that puts it at about where you said you wanted  
24 to break for lunch, but I could be wrong, so I'll just  
25 raise it.

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1 A. We are right there, right where I suggested.

2 MR. BELINFANTE: Okay. Sure. Do y'all want  
3 to call back in at let's say 2:05 Eastern Time?

4 THE WITNESS: That's fine.

5 MS. TANIS: Yeah, that works for me.

6 MR. BELINFANTE: Okay. All right. We'll do  
7 that then. That way we don't get the star message  
8 until a little while later, but thanks everybody.

9 (Thereupon, a recess was taken.)

10 BY MR. BELINFANTE:

11 Q. Let's go to page, your report, Exhibit  
12 Number 1, Document 167, page 9, the court page 8 at the  
13 bottom of the page. Third paragraph, the last sentence  
14 reads, "The information in user manuals will have to be  
15 distilled into checklists and step-by-step instructions  
16 to ensure election officials and poll workers can  
17 easily do their work and resolve problems." Do you see  
18 that?

19 A. I do.

20 Q. Okay. What was the basis of that opinion?

21 A. Basis of that opinion is based on my  
22 experience working with training materials for local  
23 election officials where you have to convey to them,  
24 whether it's the use of voting equipment or handling of  
25 processes such as absentee voting, that you can't

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1 simply give them the manual. You can't just give them  
2 the statutory language. If you want them to understand  
3 it, you have to really break it down into something  
4 that they can use quickly that is going to be  
5 reasonably sufficient.

6 Checklists are a very good idea. An example  
7 of that is I opened my absentee ballot on the break and  
8 inside, in addition to the requirements of state law  
9 for the uniform instructions, was a checklist that  
10 mirrored instructions that the voter can use, in this  
11 case me, to make sure that I follow all the steps to  
12 make sure my ballot will be completed properly so that  
13 it will get counted on election day.

14 Q. All right. Do you have the 2018 Georgia  
15 poll worker manual with you?

16 A. I do.

17 Q. Okay. Let's go ahead and mark that as  
18 Exhibit 9; is that right?

19 (Whereupon, Defendants' Exhibit Number D-9  
20 was marked for identification.)

21 BY MR. BELINFANTE:

22 Q. If you'd turn, Mr. Kennedy, to page looks  
23 like 13 of the Georgia 2018 poll worker manual. Is  
24 that an example of a checklist or step-by-step  
25 instruction?

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1 A. 13 and 14 look to be part of a flow chart.

2 Q. Right.

3 A. And with various points in time on that, and  
4 then there's -- there are steps on that. I had  
5 mentioned flow charts as an example. This would be  
6 one. I don't know how practical it is when it spans  
7 two pages.

8 Q. But you would agree with me that this  
9 portion at least of the manual has step-by-step  
10 instructions. Even on the flow chart itself looking  
11 specifically at the oath provision, for example, has  
12 step-by-step instructions.

13 A. Yes. And I think I included that in my  
14 description of what was in the manual.

15 Q. All right. And I'm going down further. It  
16 looks like page 15 has step-by-step instructions for  
17 the voting unit.

18 A. Old voting unit.

19 Q. Would you agree?

20 A. It does.

21 Q. And going down to page 61 to 62, that has a  
22 series of times that a provisional ballot could be  
23 used; right?

24 A. Yes.

25 Q. And it's broken down into easy -- there's no

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1 statutory language there. It's easy to digest. Would  
2 you agree with that?

3 A. Yes, I would.

4 Q. All right. You also talk about in your  
5 report on page 9 at the top the court's designation,  
6 your designation page 8, that "there also have to be  
7 accountability mechanisms included as part of the  
8 training program if the program is to be effective."  
9 What do you mean by accountability mechanisms?

10 A. Well, they range -- there's a number of  
11 items that you can use for accountability mechanisms  
12 which could also double as assessment methods. A test  
13 that's administered as part of the training or separate  
14 from the training is probably the most common one,  
15 required feedback during the training to ensure that  
16 voters -- or that election officials, whether they're  
17 poll workers or others, understand what you're giving,  
18 the information that -- understand the information  
19 you're transmitting, reviewing performance after the  
20 training on the actual matters to see how they actually  
21 conduct the tasks as part of an accountability  
22 mechanism and even evaluating how someone does -- you  
23 know, performs a task as part of the training that  
24 might be physical, such as watching them set up the  
25 voting equipment to make sure that they do it right and

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1 providing feedback would be examples that can be  
2 incorporated in training to get that accountability  
3 that what you're doing is proper, also record keeping  
4 as to who's taking the training, when they've taken the  
5 training, and what the results of your assessment were.

6 Q. All right. Do you know how many states  
7 roughly do a test of their election officials'  
8 training?

9 A. I don't know how many do. I know that a lot  
10 of the online training sort of gives you a -- that's  
11 been designed in different states because I've seen  
12 examples of it, and I believe that's included in  
13 Wisconsin to give you a chance to answer questions to  
14 evaluate your performance in terms of that. So it's  
15 built into the online platform.

16 Q. Do you know how many states require feedback  
17 during a training session?

18 A. I don't know how many implement a feedback  
19 mechanism in the training, no.

20 Q. Okay. How about how many states do hands-on  
21 training as part of the training process?

22 A. Again, I don't have a number on that. I  
23 know from, you know, experience that people will talk  
24 about it and tell me that that's what they've done. I  
25 know that we have done that in our training sessions.

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1 Q. And you have not attended a meeting of the  
2 Voter Registrars Association of Georgia, have you?

3 A. I have not.

4 Q. All right. And have you attended any  
5 conferences where Georgia election officials, and I use  
6 that term as broadly as possible, are receiving  
7 training?

8 A. Yes.

9 Q. What meetings have those been?

10 A. The National Association of State Election  
11 Directors.

12 Q. Uh-huh (affirmative).

13 A. At the National Association of State  
14 Election Directors training was provided, although I  
15 guess that's a broad description of what happens at  
16 those meetings. At NASED -- not NASED -- at Election  
17 Center conferences there have been Georgia election  
18 officials in attendance, and in the classes that I've  
19 taken there have been Georgia election officials in the  
20 same classes that I've been in.

21 Q. All right. Let's see. We talked about  
22 training protocols. Oh, did you know that the -- at  
23 least the 2018 poll worker manual was available online?

24 A. I was not able to find it online.

25 Q. Okay.

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1 MS. TANIS: Josh, I don't think it's  
2 accessible to anybody who doesn't have the sign-in  
3 credentials.

4 MR. BELINFANTE: I googled Georgia poll  
5 worker training and got a link to it.

6 MS. TANIS: When? Because, if so, it's very  
7 recent.

8 MR. BELINFANTE: I've done it before today.  
9 I did it again today, but I've done it -- I mean,  
10 I can't remember the first time I've done it, but  
11 -- and I think y'all had it in the motion to  
12 dismiss, a link to it. But okay.

13 MS. TANIS: Is 2020 available there too and  
14 2019?

15 MR. BELINFANTE: I've not found 2020, no.

16 MS. TANIS: Okay.

17 BY MR. BELINFANTE:

18 Q. All right. Let's see. If you could look at  
19 the bottom of page 8 in your report. Page 9 is the  
20 court's designation of it. And there it says, "The  
21 State Election Board is required to promulgate rules  
22 and regulations to ensure uniformity in the practices  
23 and proceedings of superintendents, registrars, deputy  
24 registrars, poll officers, and other election  
25 officials." Do you see that?

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1 A. Yes.

2 Q. Okay. And when you say they're required to,  
3 that is -- you mean a requirement in law; right?

4 A. There's a Georgia citation right after, the  
5 21-2-31(1).

6 Q. Uh-huh, yeah. Okay. But so, I mean, you  
7 are making a legal conclusion though; right?

8 A. Yes.

9 Q. Okay. You indicate in Exhibit -- excuse me  
10 -- Appendix A that you read Dr. Brown-Dean's  
11 deposition. Do you recall her deposition?

12 A. No. I read her report, not her deposition.

13 Q. I'm sorry. That's what I meant, her report.  
14 Did you reach any of your conclusions on Georgia law  
15 based on that report?

16 A. Well, I looked at -- I mean, she had a -- as  
17 I recall her report, it was a pretty -- it was  
18 basically a descriptive set of things. It certainly  
19 informed me on that, but it was not my sole reference.  
20 It's sort of an introduction to me about Georgia law by  
21 reading that, and it also had 50 pages of tables and  
22 citations --

23 Q. Okay.

24 A. -- in it as well. And it looks like it had  
25 been updated to reflect the changes in 316.

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1 Q. All right. But did you make independent  
2 conclusions on the law in your report?

3 A. Yes, I did. I mean, I looked at -- in fact,  
4 all the statutes that I cite, I've already read them  
5 for this case. I can't remember if there's a rule  
6 specifically cited on that. I've looked at those. I  
7 mean, I have a printout of the -- you call it Chapter  
8 21 and have gone through that.

9 Q. All right. Let's turn to, if you have it,  
10 Code Section 21-2-31, Georgia Code Section. We'll mark  
11 that as Exhibit 10.

12 (Whereupon, Defendants' Exhibit Number D-10  
13 was marked for identification.)

14 BY MR. BELINFANTE:

15 Q. And just let me know when you're there.

16 A. 21-2-31?

17 Q. 21-2-31, yes.

18 A. Okay.

19 Q. This is one of the statutes you read;  
20 correct?

21 A. Yes.

22 Q. All right. And would you agree with me that  
23 nothing in this statute expressly requires the State  
24 Election Board to train election officials?

25 A. It doesn't expressly require it. But if you

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1 specify a duty and you have to -- and later on the  
2 board is going to have authority to apply penalties or  
3 issue directives, letters of instruction I guess  
4 they're called, it's implied there needs to be a  
5 mechanism to communicate that information. And I do  
6 know that the statutes require the board to deliver  
7 their rules to the Secretary of State and to the  
8 county.

9 Q. Okay. Next let's look at Code Section  
10 21-2-100. I think we already have. Hang on a second.  
11 No, we did 70. Yeah, if you could turn to 21-2-100,  
12 I'm sorry, and we'll mark that as Exhibit 11.

13 A. All right.

14 (Whereupon, Defendants' Exhibit Number D-11  
15 was marked for identification.)

16 BY MR. BELINFANTE:

17 Q. This is one you read as well; isn't that  
18 right?

19 A. That's right.

20 Q. Okay. And here it references the State  
21 Election Board in subparagraph (e). Do you see that?

22 A. Yes.

23 Q. And there the reference is that the State  
24 Election Board can fine a superintendent or registrar  
25 if they do not attend the training required in the code

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1 section. Do you see that?

2 A. I see that.

3 Q. All right. Did you find any cases from the  
4 State Election Board where a superintendent or  
5 registrar was fined for failing to attend the training  
6 required?

7 A. I don't recall any.

8 Q. Okay. Do you have any reason to believe  
9 that a superintendent or registrar, in fact, did fail  
10 to attend a training as required by this code section,  
11 or by Code Section 21-2-100?

12 A. I wouldn't be surprised if that happens as  
13 we talked about human nature or the human driven  
14 activity, but I don't have any reason other than these  
15 things do happen.

16 Q. Okay. Similarly here, it's the duty of the  
17 Secretary of State to select the training. And I'm  
18 looking at subparagraph (a). Do you see that?

19 A. Yes.

20 Q. All right. And then, you know, the  
21 Secretary is empowered to waive the training  
22 requirement. That's subparagraph (c). But even here  
23 this is talking about training for election  
24 superintendents and not poll workers. Do you agree?

25 A. Superintendents and registrars, right.

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1 Q. Okay. I realize -- because I think it was  
2 done after you submitted your report. Did you happen  
3 to read the deposition of Governor Kemp?

4 A. I did.

5 Q. Okay. Did that deposition change in any way  
6 the opinions that you formed in your report?

7 A. Did not.

8 Q. All right. Did any of the depositions that  
9 you read after the filing of your report change the  
10 opinions in your report?

11 A. In some cases they reaffirmed my positions.  
12 I think I've mentioned Professor Smith and Professor  
13 Mayer. Their comments seemed to underscore what I  
14 concluded.

15 Q. All right. But did anything cause you to --

16 A. Nothing caused me to change my report.

17 Q. Okay. How frequently while you were in  
18 Wisconsin did the GAB meet on an annual basis?

19 A. Eight to ten times a year.

20 Q. How many of those meetings were dedicated to  
21 elections? Or were they --

22 A. All of them --

23 Q. Go ahead.

24 A. Excuse me. I'm sorry. All of them included  
25 elections. The elections part of the meetings were



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1 public, other than status reports that we provided by  
2 division in discussion. The ethics, campaign finance,  
3 and lobbying were conducted in closed session if they  
4 dealt with issuing opinions, investigations. I mean,  
5 there might have been an election in closed session,  
6 but almost all of the open session was devoted to  
7 election administration.

8 Q. And typically how long in terms of hours  
9 would the meetings of the GAB go those eight to ten  
10 times a year?

11 A. They generally started at 9:30 and ended  
12 around 5:00. The closed sessions might start around  
13 1:00 or 2:00 in the afternoon, and it varied based on  
14 the agenda and the contents.

15 Q. Sure. And so is it fair to say that -- I  
16 presume you would take a break for lunch in those  
17 meetings?

18 A. We did, although we did not go out for  
19 lunch. We had lunch brought in so that we were not  
20 gone for long periods of time. That's something I  
21 learned very quickly. When board members go out for  
22 lunch, they go out for an hour and a half to two hours.

23 Q. Right, right. So is it fair to say that the  
24 portion of those meetings that would cover elections  
25 would typically be two and a half, three hours?

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1 A. At least, yeah.

2 Q. What would the average be that was dedicated  
3 to elections, do you know?

4 A. I'd be speculating again, and it would  
5 definitely vary depending on the agenda for the  
6 meeting.

7 Q. All right.

8 A. And if you're able to, all of those meetings  
9 are videotaped. They were broadcast on Wisconsin Eye,  
10 which is a separate entity that you might be able to  
11 access some of those meetings through the Wisconsin Eye  
12 website. I'd just --

13 Q. Okay.

14 A. -- do that rather than give you the site --

15 Q. Sure.

16 A. -- since I don't know it. But it would  
17 probably be in their archives.

18 Q. Okay. And I'm sorry for the long pauses.  
19 I'm going through stuff that we've already covered, so  
20 I'm actually moving faster than anticipated. On page  
21 11 of your report, that's the top page, the court's  
22 designated page, page 10 down below, it says in the  
23 fourth paragraph from the bottom, the last sentence  
24 reads, "The State Election Board and the Secretary of  
25 State cannot be confident these laws are administered

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1 in a consistent and uniform manner unless county  
2 election officials and poll workers are effectively  
3 trained in the requirements of these critical federal  
4 laws." Do you see that?

5 A. Now, you said it's on page 11 as numbered in  
6 my report?

7 Q. No, 10 in your report. I'm sorry.

8 A. Okay.

9 Q. And then it's the fourth paragraph from the  
10 bottom.

11 A. I guess my paperwork got shuffled a little  
12 bit. Bear with me. The appendix has got mixed in.  
13 Okay. I have page 10.

14 Q. The last --

15 A. That's right.

16 Q. Do you see that sentence?

17 A. Right. Right above the bold statement?

18 Q. Yes, exactly, exactly. In terms of  
19 measuring the efficacy of the training that you  
20 describe here, I think we've already covered the  
21 ground, but I just want to be clear that when we're  
22 looking at training for compliance with the statute you  
23 identified, would it be any different from training  
24 with compliance for state laws? In other words, are  
25 the methods going to be the same if the training is on

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1 state law versus if the training is on federal law?

2 A. It's going to be the same. You're going to  
3 be looking at the same types of metrics or indicators  
4 on whether or not you're having issues.

5 Q. All right. And you've identified those  
6 metrics and indicators for me previously as -- this is  
7 when we talked about the number of complaints, the  
8 quality of paperwork, observations from observers, and  
9 accuracy of data; is that correct?

10 A. Yes, it is.

11 Q. All right. Okay. Page 12 at the top, page  
12 11 of your report, I've got a series of questions on  
13 the first full paragraph. The last sentence says,  
14 "There are no statewide meetings designed to reach poll  
15 workers, and the Secretary of State does not do  
16 anything to ensure information from these conferences  
17 reach those frontline election officials." Do you see  
18 that?

19 A. I do.

20 Q. Okay. Have you attended -- I asked a  
21 similar question earlier. I don't think I asked this  
22 one. Have you ever attended a Georgia Elections  
23 Official Association meeting?

24 A. I have not.

25 Q. All right. And other than Mr. King, have

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1 you spoken to anyone in Georgia about elections  
2 administration in Georgia?

3 A. I had a number of conversations with the  
4 election director, Kathy Rogers. She was vice  
5 president of NASED while I was president. And she  
6 would have been -- you know, she would have left that  
7 role in 2006, at the end of 2006, and I continued to  
8 talk with her. She worked for I believe Elections  
9 Systems & Software, which was a voting equipment  
10 vendor. Her staff counsel was Cliff Tatum, who stayed  
11 on at the Secretary of State's office after that, so  
12 I've had conversations with both of them about election  
13 administration in Georgia over the years.

14 Q. Okay. How about Chris Harvey, have you ever  
15 had a conversation with Chris Harvey?

16 A. I don't recall that I've ever had a  
17 conversation with Mr. Harvey. I do note that our  
18 tenure as election members of NASED overlapped for  
19 about a year. He came out sometime in 2015 is my  
20 understanding, and I was there. You know, it's  
21 possible we would have been at the 2015 and 2016  
22 meetings together.

23 Q. Okay. Have you ever had a conversation, to  
24 your recollection, with Kevin Rayburn?

25 A. I have not.

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1 Q. Okay. Or Ryan Germany?

2 A. No.

3 Q. How about Governor Kemp?

4 A. No.

5 Q. And Secretary Raffensperger?

6 A. No.

7 Q. All right. Did you consider any information  
8 regarding how any of Georgia's 159 counties train their  
9 poll workers?

10 A. I noted one example that came out of the  
11 depositions of Chris Harvey that there were errors in  
12 separately designed poll worker manuals in Gwinnett  
13 County and that they hadn't been rectified over the  
14 course of two election cycles and they repeated  
15 themselves according to that deposition. And maybe it  
16 was Mr. Worley, the board member, who was involved in  
17 that. It may have shown up in his deposition as well.

18 I did see examples. I think Lowndes County  
19 had a PowerPoint that was presented at one of the  
20 conferences of their training for poll workers. And  
21 there may have been some other poll training in the  
22 PowerPoints that I looked at from the various  
23 conferences, but not -- the only one that really stood  
24 out was the one from Lowndes County.

25 Q. All right. And forgive me if this question

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1 is duplicative, but in preparing your report did you  
2 speak to anyone -- or I'm sorry. I know who you talked  
3 to in preparation of the report. Prior to the  
4 preparation of your report, in your experience do you  
5 recall discussing election administration with any  
6 county election superintendents from Georgia?

7 A. I don't recall that. As a member of the  
8 Election Center, I certainly recognize some of the  
9 names of people who got their CERA, C-E-R-A,  
10 certifications along with me. But I would not recall  
11 the specific conversations, but it was not unusual in  
12 the classes or in the three types of meeting events  
13 that they had that conversations would occur about  
14 administrative issues or practices. But I can't  
15 specifically recall because that's happened over, you  
16 know, a period of several years, and the last was in  
17 2016.

18 Q. Going to the Lowndes County presentation, do  
19 you have any specific criticism of Lowndes County's  
20 training for poll workers?

21 A. What I saw was a good example of things that  
22 could be done. I think this is, you know, some of the  
23 things that I think are essential in training. Lowndes  
24 County, it seemed that it was very participatory  
25 feedback at the PowerPoint that I recall. And it

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1 showed how you can incorporate that with information  
2 that was available to the Secretary of State and  
3 available to other county officials.

4 Q. All right. And just so I'm clear, you did  
5 not actually see Gwinnett County's training materials.  
6 You saw where it was referred to in Mr. Harvey and  
7 Mr. Worley's depositions; is that accurate?

8 A. Talking about the poll worker manual?

9 Q. Yes.

10 A. I just saw the references to the errors,  
11 yes.

12 Q. Okay. So, I mean, is it fair to say that  
13 your report then does not have an opinion on the  
14 efficacy of county training materials for poll workers?

15 A. I'm just trying to think how to answer that  
16 question because what I learned from looking at the  
17 materials is there were some good examples, such as  
18 Lowndes County. There were concerns that were raised  
19 that came out of -- if you look at the complaints, I  
20 have to question how good the training was if people  
21 are constantly concerned about whether or not they had  
22 provisional ballots or absentee ballots counted or the  
23 confusion that they encountered at a polling place. So  
24 looking at the overall training -- I mean, my opinion  
25 was directed toward the overall training, primarily



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1 focused on the Secretary of State. But, you know, it's  
2 clear that what was being conveyed down the line wasn't  
3 effective given the large number of complaints that  
4 were coming out of the election.

5 Q. But I guess my question is a little bit more  
6 specific than that, which is do you have an opinion  
7 on -- or does your report have an opinion on county  
8 training manuals for poll workers?

9 A. It does not have a specific opinion on that,  
10 no.

11 Q. Okay. And your criticisms that you just  
12 spoke of regarding the complaint, you're presuming the  
13 facts in the complaint are true. Is that fair?

14 A. That's fair.

15 Q. All right.

16 A. I think there's a reasonable basis for that  
17 given the number of the same types of issues recurring  
18 in these complaints.

19 Q. Well, let's talk about that for a minute.  
20 How much -- do you have an opinion or does your report  
21 have an opinion on how many errors of a similar kind  
22 need to happen in order for something to be systemic?  
23 I didn't see your report address that, and that's my  
24 question is whether your report does.

25 A. My report doesn't quantify it. It talks

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1 about that as a measure for, you know, like the canary  
2 in the coal mine. It tells you there's an issue and  
3 spurs you to respond to that issue.

4 Q. Sure. But you had extensive experience with  
5 poll workers, certainly at least -- and, in fact, you  
6 are one in Wisconsin; right?

7 A. That's right.

8 Q. And in your experience are poll workers  
9 trying to do the right thing by voters?

10 A. In my experience, they generally are.  
11 There's occasionally a rogue poll worker that you sort  
12 of wonder given their personalities what's driving  
13 them. My dad was a poll worker, and the guy who was  
14 the chief inspector used to drive me nuts when I'd stop  
15 by to visit that polling place.

16 Q. But those folks -- I'm sorry. Go ahead.

17 A. No. I was just giving an example that, yes,  
18 they are trying to do that. But we know that mistakes  
19 are made, and you want to minimize those and certainly  
20 mitigate the impact of those mistakes.

21 Q. Sure. And do you have any reason to believe  
22 that at least as it relates to that standard, and by  
23 that I mean trying to assist the voter and coming at it  
24 from a position of goodwill, that the majority of poll  
25 workers in Georgia are different from those in

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1 Wisconsin?

2 A. I have no reason to think that they would  
3 be. I guess one of the things I didn't see was, you  
4 know, sort of a leadership direction that focused on  
5 the reason for your job is to facilitate the  
6 participation of voters to ensure that they're able to  
7 do what they're legally entitled to.

8 Q. Would you -- you've presented at numerous  
9 conferences. You've attended numerous conferences.  
10 Would you agree with me that there's a significant  
11 difference in what someone takes away from training  
12 materials if they're present at the conference versus  
13 just reading the PowerPoint?

14 A. Well, obviously you might miss the context.  
15 There's going to be discussion around that, so the  
16 PowerPoint gives you a sense of what was covered on  
17 that. It doesn't -- most people looking at a videotape  
18 of a presentation, you're not going to get a -- you're  
19 really not going to see what was said, how it was said,  
20 other than that's just the direction. So those are the  
21 points that they were trying to get across.

22 Q. And wouldn't it also be true that to the  
23 extent that there are audio learners in the audience,  
24 and by that I mean people who learn better by hearing  
25 rather than reading, being present at the conference

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1 would be more effective for them than just reading  
2 materials cold?

3 A. Yeah. I talked about the fact that you need  
4 to -- any training has to have several different  
5 channels because you're going to have a diverse  
6 audience, and the different channels reaffirm points  
7 that you've made. I mean, that's the idea of a  
8 PowerPoint is to give you a visual illustration. I  
9 think we've all been at conferences where someone just  
10 reads a PowerPoint.

11 Q. Yeah. Those are the ones where the coffee  
12 sells out quickly. I've been to plenty. Page 13 of  
13 the court's document, number 167, page 12 of yours,  
14 there's a discussion a little bit about Firefly. At  
15 the time that you completed your report, were you given  
16 any documents that showed the files that are available  
17 on Firefly?

18 A. I don't recall any documents. There was  
19 some descriptions in the depositions. I don't recall  
20 seeing a document that listed everything that was  
21 there, but --

22 Q. Okay. Have you since seen a document like  
23 that?

24 A. No.

25 Q. All right. Are you aware that other states

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1 and groups have come to Georgia to study Firefly  
2 because they find it to be effective?

3 A. I'm not aware of that.

4 Q. All right. Also on page 13 of the court's  
5 number, page 12 of your report, there's a discussion of  
6 the Election Center, which you've talked about some  
7 thus far. Is the Election Center -- poll workers  
8 typically don't go take classes at the Election Center;  
9 is that correct?

10 A. Very few do, right.

11 Q. Okay. It's more for supervisors and other  
12 trainers; is that fair?

13 A. Yeah, generally -- I mean, you'll have a  
14 mixture of state and local officials, more local  
15 officials than state.

16 Q. Uh-huh (affirmative).

17 A. And by local I mean the administrators, not  
18 the election day officials.

19 Q. Okay. Let me ask you on that page 12 of  
20 your report, page 13 of the court's page numbers,  
21 there's a reference to Appendix B in your report, and I  
22 did not -- I didn't see where I got a copy of Appendix  
23 B. Mine ends with Appendix A, page 3.

24 MR. BELINFANTE: Beth, do you know if that  
25 was -- if maybe I printed the wrong copy or if it

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1 was not included?

2 MS. TANIS: I don't know of anything in  
3 Kevin's report that is not in what you have. I'm  
4 trying to find this reference because you're  
5 pointing out something that I didn't catch. Where  
6 is it on page -- you said page 13 of the original  
7 report?

8 MR. BELINFANTE: Yeah, page 13 of the  
9 original report. That's the court's number, page  
10 13. And it's the third paragraph from the bottom.

11 MS. TANIS: Oh, page 12.

12 MR. BELINFANTE: Yeah, page 12 of the  
13 report.

14 MS. TANIS: Oh, yeah. Okay. The third  
15 paragraph from the bottom. All right.

16 MR. BELINFANTE: I mean, I think I was able  
17 to at least get a good sense of it online. But if  
18 there is an Appendix B, could somebody just email  
19 that to us at some point?

20 MS. TANIS: Yes. I'm not aware of there  
21 being an Appendix B. If Kevin has an Appendix B,  
22 we will get it to you.

23 MR. BELINFANTE: Okay.

24 BY MR. BELINFANTE:

25 Q. All right. In the second to last paragraph,

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1 the first sentence says, "According to the Election  
2 Center website, only six current Georgia election  
3 officials have completed the CERA certification  
4 program." Do you see that?

5 A. Yes.

6 Q. All right. I have gone to the website that  
7 is cited there at Footnote 30. And that page opens  
8 with "Professional Education Program," but I could not  
9 see where you were able to get the number that six  
10 Georgia election officials have done the training, or  
11 any other state for that matter. I mean, I see there's  
12 a section on -- go ahead.

13 A. My recollection is there's a -- on the  
14 right-hand corner there's -- it says graduates or CERA  
15 members, and you click on that, and it drops down. But  
16 when I copied the link, that would be the link that  
17 would have pulled it. And, you know, there's several  
18 hundred, and it tells you what state they're from,  
19 whether or not they're still active, and that's how I  
20 did my count.

21 Q. All right. I'll have to -- because I'm  
22 not seeing that. Maybe if you could -- and forgive me  
23 for being dense, I guess, but -- because I see where  
24 it's CERA Graduates in the News, and there's a member  
25 area that has Resources and Check PPP, but you have to

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1 log in to get that.

2 A. And I did not have to log in to access that  
3 information.

4 Q. All right.

5 A. So I'll make a specific point to pass it on  
6 to --

7 Q. Yeah, that would be great. That would be  
8 great. And then I received an email that is cited in  
9 your report as Exhibit 31, which is to Tim Mattice at  
10 the Election Center.

11 A. It's pronounced Mattice, but --

12 Q. Oh, Mattice. Okay. He says that there  
13 are -- as your report reflects, there are 34 members of  
14 the Election Center in Georgia and that 11 members of  
15 CERA are in the Secretary of State's office. Did you  
16 in any other emails ask him for a comparative kind of  
17 number? I'm just curious where Georgia falls as  
18 compared to other states.

19 A. I did not ask him for that.

20 Q. Do you have a general sense of where -- or  
21 how many local officials in Wisconsin have completed  
22 the CERA certification program?

23 A. It's less than Georgia. They either tended  
24 to be people in my office or county clerks. I'm not  
25 sure if there were any municipal clerks that completed



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1 the CERA certification. They have some other  
2 certification programs, national and state, that our  
3 local people avail themselves of. In fact, our staff  
4 is taught at the University of Wisconsin Green Bay  
5 through the municipal clerk professional certification  
6 program.

7 Q. Okay.

8 A. I don't remember the number from Wisconsin.

9 Q. All right. Do you know -- do you recall  
10 roughly how many persons in your office at the GAB had  
11 CERA certification?

12 A. I'm guessing over the time I was there up to  
13 a dozen.

14 MR. BELINFANTE: All right. Let's go ahead  
15 and just enter in the email as Exhibit 12. And I  
16 think the exhibit is technically, Beth, your  
17 forwarding email to me.

18 MS. TANIS: Okay.

19 (Whereupon, Defendants' Exhibit Number D-12  
20 was marked for identification.)

21 BY MR. BELINFANTE:

22 Q. Is there anything in -- well, never mind. I  
23 think we've covered that territory. All right. Let's  
24 look at page 14, that's the court's number, your report  
25 number page 13.

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1 A. Okay.

2 Q. You talk about that Wisconsin has an even  
3 larger number of local election officials than Georgia.  
4 Roughly do you know how many poll workers are at  
5 polling locations in a Wisconsin general election?

6 A. The statute requires seven poll workers at  
7 an election. There are processes for reducing that to  
8 a minimum of three.

9 Q. Is that per -- go ahead. I interrupted.  
10 Sorry.

11 A. I know. I was going to say our rural  
12 municipalities might be able to run a polling place  
13 with three poll workers. We also permit our poll  
14 workers to work in shifts, so it's not unusual that  
15 you'll have a morning shift and an afternoon shift of  
16 poll workers or a mixture of people who work part of  
17 the day and people who work the full day.

18 Q. Okay. Do you know how many polling  
19 locations there are in Wisconsin in a general election?

20 A. I always say it's under 3,000, but it's  
21 probably between 2750 and 2850 depending. It will be a  
22 lot less next week I'm sure.

23 Q. Sure. All right. The last I guess sentence  
24 of the fourth full paragraph, including the bold one,  
25 reads -- again, this is on page 13 of your report --

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1 "From my 30 plus years of experience as Wisconsin's  
2 chief election official, I can describe the challenges  
3 presented in establishing and maintaining an effective  
4 training program for a large diverse group of local  
5 election officials." Do you see that?

6 A. I do.

7 Q. When you say diverse group of local election  
8 officials, what did you mean by diverse group in that  
9 sentence?

10 A. In Wisconsin it would cover ranges in  
11 educational attainment, socioeconomic status, racial  
12 distinction, age.

13 Q. Okay.

14 A. Gender, I suppose.

15 Q. Sure. And then it says in the next  
16 paragraph, the second sentence is "Establishing a  
17 communication protocol is the foundation for effective  
18 training." Do you see that?

19 A. I do.

20 Q. What did you mean by a communication  
21 protocol?

22 A. I mean that it's important to have a means  
23 to ensure that the information you develop is available  
24 for the election officials and the different audiences  
25 that you're reaching out to. And that can be, you

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1 know, email communications, it can be a website portal,  
2 or even the website.

3 Q. Okay. Do you know -- I mean, we've talked  
4 about what Wisconsin had. Do you know how other states  
5 have had communication pro -- let me ask it this way.  
6 Do you know what communication protocols in states  
7 other than Georgia and Wisconsin have been?

8 A. I have seen demonstrations at state election  
9 director meetings, and there's a course devoted to  
10 communications with the CERA program, which covers a  
11 wide range of communications. There's been  
12 descriptions of similar setups where they've talked  
13 about building communication networks.

14 And obviously it's evolved over the years  
15 from the Listserv and bulletin boards, which were  
16 obviously the first step, because when I started, you  
17 know, we had local official mailings. There wasn't  
18 email to all of them. But then there was the  
19 development of electronic bulletin boards and Listserv,  
20 so it's evolved. And I'm sure it's continuing to  
21 evolve. I had to explain to my board members who, you  
22 know, widely are on Twitter, sort of Twitter and  
23 Facebook, so that we had -- continued getting our  
24 message out.

25 Q. Okay. Do you know -- I mean, is there a

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1 state that you would look to and say they do it best?

2 A. I can't cite to one. I mean, I know that  
3 Colorado does a very good job in general with  
4 administering elections. And I couldn't tell you  
5 specifically about their communication protocols, if  
6 it's an example of how well elections are run in  
7 Colorado.

8 Q. All right. Also on page 13, the last full  
9 paragraph, the last sentence reads, "There must be a  
10 requirement that county election officials report back  
11 to the Secretary of State that they received the OEBs,  
12 reviewed the content of the OEBs, and taken steps to  
13 implement court ordered requirements spelled out in the  
14 OEBs, including directing poll workers and other  
15 frontline election workers to carry out their duties  
16 consistent with the court directives." Do you see  
17 that?

18 A. I do.

19 Q. Okay. And, sir, I'm truly not trying to be  
20 semantic here, but you used the word must again. By  
21 must, do you mean that there is a legal obligation to  
22 do so?

23 A. By must, I mean that you can't be assured  
24 that people have gotten the message and carried out  
25 their responsibilities unless you have that feedback

1 loop.

2 Q. All right. And what did Wisconsin do when  
3 there was a court case that came out and specifically  
4 to make sure that the city municipal clerks all knew  
5 about the court case?

6 A. Well, it generally came out in our UOCAVA  
7 litigation that they're -- it required them to report  
8 back on tracking that. We actually kept track of the  
9 status of how they were dealing with the court orders.  
10 One of them had to deal with making sure that the --  
11 most of the procedures were in place through our  
12 statewide voter registration system.

13 But then we could track -- have them  
14 specifically track and explain any shortcomings. I  
15 mean, if you missed the 47 day deadline, we needed to  
16 know why you missed it. So, you know, when we had that  
17 kind of a court order, we were hands on with 1850 -- it  
18 was 1854 when I was there. It's now at least another  
19 50 municipal clerks.

20 Q. And the example you gave with UOCAVA, was  
21 the feedback loop limited to UOCAVA?

22 A. Oh, in that case it was. I can't recall  
23 that we've actually had a court order that affected the  
24 election administration from that point. I wasn't  
25 there when the One Wisconsin Now order came out, which

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1 would have impacted that. I can tell you as a poll  
2 worker I got information on that. The poll worker  
3 training manual that I have for Wisconsin that I got  
4 for my training makes reference to that court order.

5 Q. Okay. And do you have a sense -- or not a  
6 sense. Do you have specific knowledge on what other  
7 states do when a court order comes down and how they  
8 communicate that out to election officials?

9 A. I can't say that I have a specific sense. I  
10 think the implications are pretty clear. When a court  
11 issues an order, you've got to do something to make  
12 sure it gets implemented. I mean, even Chris Harvey  
13 talked about the same thing with their UOCAVA, that  
14 there had to be followup on tracking compliance. I  
15 don't know what it generated, but there was a court  
16 order that generated the UOCAVA compliance, and he made  
17 a reference to it in one of his depositions.

18 Q. Okay. Are you familiar with an organization  
19 known as the Association of County Commissioners of  
20 Georgia?

21 A. No.

22 Q. How about the Georgia Municipal Association?

23 A. No. I mean, I can tell you I'm not  
24 surprised that they exist. We have similar --

25 Q. Sure.

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1           A.     -- organizations in Wisconsin, and they're a  
2     national -- probably part of a national component.

3           Q.     At some point -- I'm just looking for the  
4     place on the report, but at some point in the report  
5     you talk about the need to track names and contact  
6     information for local election officials. How is that  
7     done in Wisconsin?

8           A.     It's built into our statewide voter  
9     registration system. And there's a method for updating  
10    that information, and we will -- I don't know if it's a  
11    statutory requirement for county clerks, but counties  
12    always issue a directory of local election officials.  
13    And so we will look at the directories and compare them  
14    to what we have in the statewide voter registration  
15    system.

16                   And we have established -- I don't want to  
17    say it's a specific protocol but certainly a practice  
18    of communication among our county and municipal clerks.  
19    So, for example, it's not unusual for us to get notice  
20    that a municipal clerk may have passed away, may have  
21    quit their job, or had some -- or left for various  
22    reasons, which spurs us to then follow up to make sure  
23    that that's current.

24           Q.     All right. Do you know how other states do  
25    it?



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1           A.     My sense is they would be doing it the same,  
2     very similar way. I don't know if they would build it  
3     into their statewide voter registration system, but for  
4     us we looked at our voter registration system as a  
5     complete election administration tool for our election  
6     officials.

7           Q.     Okay. What information do you have on how  
8     Georgia maintains a current list of elected -- or  
9     election officials at the local level?

10          A.     I don't have any information.

11          Q.     If you can turn to page 14 of your report,  
12     court document page 15 on Document 167. The first full  
13     paragraph reads, "In developing and implementing  
14     training programs, the Secretary of State needs to  
15     focus on teaching challenges due to age, background,  
16     and learning styles of the local election officials."  
17     Do you see that?

18          A.     Yes.

19          Q.     Is it your opinion that that is not being  
20     done in Georgia right now?

21          A.     That's my sense. Most of the materials and  
22     information I see emanating from the Secretary of  
23     State's office seems to be focused primarily on written  
24     material. I know there are training videos in Firefly.  
25     But, again, they also tend to be here's what you have

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1 to do and here's how you do it. I didn't see much that  
2 indicated there was any hands-on experiences.

3 Q. Are there metrics out there to determine  
4 whether training programs are being created in a way to  
5 address different learning styles?

6 A. I'm not sure if there are metrics. I mean,  
7 there are metrics in the sense that you can measure the  
8 reading comprehension of reading material. That's not  
9 an unusual situation. And, in fact, that was obviously  
10 one of the concerns about ballot design, making sure  
11 that the instructions were not written at a college  
12 level for voters.

13 And there was quite a bit of involvement for  
14 election officials through the Election Center's  
15 training programs and NASED, which is the state  
16 election directors association, where they brought in  
17 individuals to talk about the learning style, including  
18 some of these groups that -- and I can't remember the  
19 names of them. I've actually got a series of pamphlets  
20 from them that are written and geared to comprehend  
21 language.

22 Q. Well, maybe I -- I probably asked the wrong  
23 question. Is there a particular methodology that you  
24 employed to have your conclusion that the state is  
25 not -- the state of Georgia is not doing enough to

1 address different learning styles?

2 A. Well, my methodology looked at what I saw  
3 that was available either described in depositions or  
4 other materials and the materials themselves.

5 Q. Right. And so that explains the facts that  
6 you observed. And then when you were trying to apply  
7 those facts to a particular -- or apply a methodology  
8 to those facts to determine, make a conclusion, I'm  
9 just trying to figure out what methodology or method  
10 you were doing other than -- well, I'll just leave it  
11 at that. Was there a particular method you were  
12 looking at to reach those conclusions?

13 A. Well, as you said, I was trying to identify  
14 the factual basis of what was there in evaluating  
15 whether the materials reached across multiple channels  
16 of communication, you know, visual, aural -- as in  
17 a-u-r-a-l, something someone could hear -- physical.  
18 Whether there were feedback mechanisms in that is part  
19 of the challenge of communication.

20 Q. All right.

21 A. So I --

22 Q. Go ahead.

23 A. I think that's the description of what I was  
24 doing.

25 Q. Okay. The next paragraph says that "The

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1 Secretary of State has to evaluate what information is  
2 the most essential to focus on at a given point in  
3 time." Do you see that?

4 A. Yes.

5 Q. Would you agree with me that making that  
6 decision is pretty much a judgment call for the  
7 secretary to make?

8 A. That's true.

9 Q. The next paragraph begins with "Georgia's  
10 history of restricting access to the ballot for  
11 citizens of color also presents significant challenges  
12 to an effective training program." Do you see that?

13 A. I do.

14 Q. Can you explain that to me, what Georgia's  
15 history -- how it impacts effective training?

16 A. Well, Georgia was one of, what, 13 states  
17 that were subject to preclearance provisions based on  
18 findings when the Voting Rights Act was enacted in 1965  
19 about its history of discrimination against individuals  
20 of color. And that has an impact on training because  
21 it subjects, I think, Georgia and other states to much  
22 more scrutiny with respect to ensuring that you're  
23 protecting those rights where there's been a historical  
24 practice of discrimination.

25 I mean, you oftentimes have to break down

1 institutional approaches. Just saying treat everybody  
2 equal doesn't necessarily work unless you've given them  
3 the framework of why that's important and where it  
4 comes from. And also to pair election officials  
5 together, that's going to be one way to ensure the  
6 system is going to be evaluated is are you taking  
7 action to have an audit system of more disparate  
8 impacts on individuals of color.

9 Q. Well, you could have a disparate impact on  
10 voters of color in any state; right?

11 A. That's right.

12 Q. And so I guess what I'm trying to figure out  
13 is why is Georgia's history, how does that get into  
14 training on say the use of provisional ballots? Give  
15 me a specific example of how Georgia's history impacts  
16 training on provisional ballots.

17 A. Well, provisional ballots are generally a  
18 fail-safe mechanism for individuals who, for whatever  
19 reason, aren't able to cast their ballot at a  
20 particular location for a number of different  
21 scenarios. And, you know, the history of provisional  
22 ballots, it was designed to protect people who might  
23 have been subject to voter registration errors and  
24 other reasons why they might be disenfranchised. If  
25 you've got a past history of that kind of practice, it

1 underscores the need to make sure that you're being  
2 even more careful than you would be. To me it just  
3 tells me to focus on making sure that there's no  
4 possibility that people can say we are treating people  
5 differently than we're affording any voter the  
6 opportunity to fully participate in the election.

7 Q. Is it your opinion that Georgia poll workers  
8 don't know the importance of the value of voting?

9 A. No, that's not my opinion.

10 Q. Is it your opinion that Georgia poll workers  
11 don't recognize the importance of allowing eligible  
12 voters to vote?

13 A. No. I think my concern was making sure that  
14 that's consistently reinforced.

15 Q. Well, I mean, if that's true in Georgia,  
16 shouldn't it be consistently reinforced everywhere?

17 A. I would hope that it's reinforced  
18 everywhere, yes.

19 Q. Okay. And so I guess where I'm getting to  
20 is I don't see any linkage between Georgia's history  
21 and current training on voting in elections that's  
22 unique to Georgia or any other state that was covered  
23 under Section 5. And so I guess my question is your  
24 paragraph concludes with "leaving the history of  
25 discrimination unspoken when presenting information

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1 about election officials' duties creates the impression  
2 treating all voters equally and fairly is not a  
3 paramount responsibility for doing their job." How  
4 is -- if you don't believe that poll workers believe  
5 that -- let me put it this way. If you believe, which  
6 I think you just said, that poll workers believe that  
7 treating people fairly and equally is an important duty  
8 in their job, why does training materials need to bring  
9 up Georgia's history dating back decades?

10 MS. TANIS: Object to the form.

11 A. Well, what I'm saying in my opinion is that  
12 that is not really being addressed in the training.  
13 You know, what you get is here is what you have to do,  
14 here's how you have to do it. It doesn't tell you  
15 we're doing this for the voter. It doesn't tell you  
16 what the background is from that.

17 It's sort of -- you know, my evaluation of  
18 these materials are that, from the perspective of the  
19 Secretary of State, there are no issues, despite the  
20 complaints and the lawsuits that are out there, and  
21 that when they're being -- that when the state election  
22 operations are being challenged on that basis that it's  
23 important to incorporate into the training materials,  
24 look, a lot of attention is being focused on us for  
25 this, here's why we do this, here's how we address it.

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1 I did not see those components in the  
2 training material, and I think that's important that  
3 you not only come from that background, that it's not  
4 singling out people in the office for when the poll  
5 workers were behaving a particular way. There's a lot  
6 of attention being directed to you from the -- because  
7 we're Georgia and it comes from this, and this  
8 underscores the need to make sure that we are doing  
9 what the law requires, both the Georgia statutes and  
10 then the federal law.

11 Q. Are you familiar with Stacey Abrams?

12 A. Yes. I know she was a candidate for  
13 governor.

14 Q. And -- go ahead.

15 A. Yes, against the current governor.

16 Q. Brian Kemp.

17 A. Brian Kemp.

18 Q. Yeah.

19 A. And I believe she -- I wasn't sure what her  
20 role in the House was. They kept making reference to  
21 she was a leader. I didn't know if she was actually  
22 like a majority leader or a speaker when she was in  
23 the -- I believe it's the House of Representatives in  
24 Georgia.

25 Q. She was the house minority.



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1           A.     And I know that she's done a lot of national  
2 discussion about possibilities.

3           Q.     Including vice presidential possibilities?

4           A.     Yes.

5           Q.     And you were aware of that when you wrote  
6 the report?

7           A.     I was aware of it. It wasn't a factor in my  
8 report.

9           Q.     Were you aware when you wrote your report  
10 that organizations that Ms. Abrams has been affiliated  
11 with conducted poll testing on the phrase voter  
12 disenfranchisement?

13          A.     No.

14          Q.     Were you aware that polling conducted showed  
15 that using the phrase voter disenfranchisement  
16 motivated voters very strongly?

17          A.     No.

18          Q.     If you knew that, would it change your  
19 opinion on some of the allegations in the complaint?

20          A.     I wasn't taking opinions on the allegations  
21 in the complaint. I mean, I'm -- my focus was on the  
22 training materials and the performance of duties and  
23 enforcement aspects of this. The complaints informs me  
24 about what the concerns were by the parties that hired  
25 me.

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1 Q. Okay. Wisconsin's -- are you aware that  
2 Wisconsin's African American population is  
3 significantly smaller than Georgia's?

4 A. Yes.

5 Q. I think I've seen some census data that has  
6 Wisconsin's African American population at about  
7 6.7 percent projected for 2019. Does that sound right  
8 to you?

9 A. Well, that's the material that you provided  
10 through Beth Tanis to me, and I looked at that. And  
11 that -- I mean, without looking at that, I would have  
12 said it was in the 6 percent range, so --

13 Q. Okay. Honestly, I couldn't recall if I  
14 included that or not, so let's go ahead and mark that  
15 census data sheet as Exhibit 13.

16 (Whereupon, Defendants' Exhibit Number D-13  
17 was marked for identification.)

18 BY MR. BELINFANTE:

19 Q. Any reason to doubt the U.S. Census numbers  
20 on this?

21 A. I don't have any reason to doubt it.

22 Q. Okay. On your opinion that leaving out  
23 information regarding Georgia's history of  
24 discrimination, are there studies that you relied on to  
25 form that opinion? Are there -- I'll leave it at that.

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1 Are there studies that you relied on?

2 A. What I relied on to say that I thought it  
3 was important to make sure that was included?

4 Q. Yes.

5 A. No. I think that would be based more on my  
6 experience over a broad range of training protocols. I  
7 mean, we certainly talked a lot about the impact of  
8 discrimination nationally in the CERA certification  
9 program. It's certainly something that we are  
10 sensitive to in Wisconsin since our African American  
11 population and, you know, the Hispanic population tend  
12 to be concentrated in a few urban areas and becomes a  
13 focus in the redistricting lawsuits that have occurred  
14 every year -- or every ten years. It's always kind of  
15 focused on that, so --

16 Q. Okay. One of the criticisms you have of the  
17 State Election Board is that its members did not have  
18 training before coming onto the board or upon being  
19 appointed. Do you recall that?

20 A. I do.

21 Q. Okay. Does it matter to you that the  
22 members of the State Election Board, at least over the  
23 last decade, have been lawyers with legal training?

24 A. No. I mean, based on my experience, lawyers  
25 with legal training don't all know -- understand

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1 elections. And my board were former judges, and they  
2 were some of the best judges that served in the state,  
3 both the trial and appellate level.

4 And they were coming into a very complex  
5 regimen, not only of election administration, but  
6 campaign finance, ethics and lobbying. And they'd had  
7 some experience with that because they all ran for  
8 office. They all had to file campaign finance reports.  
9 They all were subject not only to the state ethics code  
10 but the judicial ethics code. May or may not have any  
11 experience with lobbying.

12 But for them to be effective board members,  
13 it was important to give them an introduction into  
14 responsibilities of the board, the duties of the board,  
15 the mechanisms by which the board operates, to give  
16 them a comfort level with the website. It also  
17 actually helped us because, based on the questions they  
18 got, we're like, Well, why do we do this? Well, why  
19 don't we -- we don't have any information on that? So  
20 to me that was essential when you're dealing with, like  
21 I said, very knowledgeable, intelligent, experienced  
22 individuals with legal backgrounds.

23 Q. Sure. But would you agree with me that a  
24 general counsel for a state political party has  
25 significant election law experience?

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1           A.       They would have election law experience. I  
2 don't know how that makes them entirely familiar with  
3 the full operations of the duties they might be taking  
4 on, but certainly they're starting at a different  
5 point.

6           Q.       Sure. And that would be true too for  
7 someone who served as the general counsel to the office  
8 of the governor as well; right?

9           A.       They'd have a much broader range of  
10 experience. In my dealings with gubernatorial counsel,  
11 they weren't necessarily election law experts, but --  
12 in fact, we spent quite a bit of time working with the  
13 governor's counsel over the years. Learned from  
14 experience to be proactive particularly when they were  
15 calling special elections to make sure they understood  
16 what the requirements are.

17          Q.       Do you know how many other states have a  
18 board that's like the State Election Board?

19          A.       I don't know. It's not unusual in the sense  
20 of having a State Elections Board and a Secretary of  
21 State. I know Indiana has that, for example. Maryland  
22 and the District of Columbia and Illinois just have an  
23 elections board. I don't -- you know, these are ones  
24 that I know from my own experience. I can't remember  
25 if Ohio also has a board in addition to the Secretary

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1 of State. Rhode Island I believe does. And I know in  
2 terms of running elections, I think there's 10 or 11  
3 where the board is responsible for the running of  
4 elections, but there are some where it stays with the  
5 Secretary of State, but there's also a board there.

6 And the division of duties are -- you know,  
7 you have to look at them, you know. I mean, I had to  
8 learn about what the role of the Georgia Board of  
9 Elections was, you know, for the state by looking at  
10 the statutes and the meetings and the minutes and  
11 things.

12 Q. Do you know if there are standard training  
13 materials for persons who go on those kinds of boards?

14 A. I don't know. I can -- I only know what I  
15 thought was important to make sure that our board  
16 members knew and tried to refine that, and we would  
17 usually get a new board member every year. And I will  
18 say I did not do that when it was the State Elections  
19 Board. It's a practice that I learned was beneficial.  
20 And, as I stated, members of the State Elections Board  
21 often came from similar backgrounds to what you  
22 described for your board. In other words, they weren't  
23 former judges, although one was married to a judge.

24 Q. One of ours was a judge, but I get the  
25 point. All right. Let's talk about the part of your

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1 report -- I've got it on page, starting on using your  
2 report, number 16 to 17 which talks about the focus on  
3 the voter approach.

4 A. Yes.

5 Q. Is the focus on the voter approach, is that  
6 something that kind of is -- you've coined that phrase,  
7 or is that something that I would find in national  
8 literature on election training?

9 A. I would expect that you would see that in  
10 literature on election training. I would expect you  
11 would see that in some of the Election Center training  
12 programs. But, you know, whether they use the same  
13 phrase or not, I think anyone who's worked in  
14 elections, it's not an unknown quantity. The bottom  
15 line is you're doing this for the voter as well as for  
16 the institution of the process, and you're trying to  
17 make this system work.

18 I mean, it's one of the incredible  
19 privileges that a handful of state and local election  
20 officials get to have that direct responsibility as  
21 opposed to just processing a license application, not  
22 to diminish the importance of that. But it can be very  
23 inspirational to recognize you, in the words of what  
24 were in some of the Georgia materials, are holding a  
25 very important responsibility in your hands for someone

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1 else that you want to facilitate and protect.

2 Q. Can you identify for me states that have  
3 effectively adopted the focus on the voter approach?

4 A. I have not looked at, you know, a wealth of  
5 training materials particularly in other states. As I  
6 said, from my 40 years of experience, the takeaway that  
7 I come from is if you're going to be successful in  
8 training your election officials at all levels that an  
9 important element is that you get to the bottom line,  
10 which is the voter and protecting the rights of that  
11 voter to cast a ballot that they're entitled to cast.

12 Q. Okay. Would you agree with me, though, if a  
13 state is complying with election laws, that voters'  
14 rights are being protected?

15 A. Assuming that the state's laws are  
16 consistent with that. I mean, I think nowadays they  
17 are, but they weren't always. Our laws are constantly  
18 challenged on that basis. I mean, the One Wisconsin  
19 Now case was a challenge to changes in Wisconsin law  
20 arguing that they were not protecting voter rights in  
21 certain situations.

22 Q. Fair. Let me ask it this way. If somebody  
23 is complying with federal election law, then at least  
24 the rights articulated in those statutes are being  
25 protected.



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1           A.     What, you know, my opinion is is that you  
2     don't just say follow the law. You give equal -- you  
3     provide some leadership. You give them a reason why  
4     that's the case, because people don't always follow the  
5     law. And there are consequences when you don't follow  
6     the law, and understanding what those consequences are  
7     is important. That's, you know, what I was  
8     identifying -- what I identify in my opinion was that  
9     that's an important element to ensure that you are  
10    protecting those rights by providing that. You're  
11    doing this for the voter, and here's why we're doing  
12    it.

13          Q.     Right. But at the end of the day, for  
14    whatever reason they're doing it -- they could be doing  
15    it just because they like law and want to enforce law.  
16    As long as the law is being complied with, then there's  
17    not a diminution of that voter's rights articulated in  
18    that law; is that correct?

19          A.     That's correct. The idea -- the idea of the  
20    training is simply to reinforce that it's done.

21          Q.     And I think I've asked this before, but you  
22    would agree with me that at least kind of coming into  
23    the polling place most poll workers want to comply with  
24    the law.

25          A.     Yes. But they have to know what it is and

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1 understand it and know what the --

2 Q. Sure.

3 A. -- consequences are.

4 Q. All right. Let's see. I'm on page 16 of  
5 your report, page 17 of Document 167.

6 MR. BELINFANTE: I notice we've been going  
7 for about an hour and 40 minutes. Does anybody  
8 want to take a brief break?

9 MS. TANIS: I'll leave that up to Kevin and  
10 the court reporter.

11 THE WITNESS: I'm fine at the moment. I  
12 don't know when you're going to come to another  
13 breaking point, but I'm fine for now.

14 (Thereupon, an off-the-record discussion was  
15 held between the parties.)

16 BY MR. BELINFANTE:

17 Q. Under the "Focus on the Voter," it looks  
18 like the third paragraph says that "This must be  
19 reflected in an emphasis on making voting easy,  
20 accessible, and transparent. This requires not  
21 only" -- excuse me. "This requires a focus not only on  
22 accessibility for persons with disabilities, but  
23 selecting locations and setting hours that enable  
24 voters to easily get to the voting location." Do you  
25 see that?

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1 A. Yes.

2 Q. Selecting locations and setting hours, is  
3 that an issue of training, or is that something else?

4 A. Well, that's training for your county  
5 officials. My understanding is they have some  
6 flexibility in the locations of their polling places,  
7 the hours that advanced voting is available, and these  
8 are considerations that need to be reinforced. It was  
9 a subject in the One Wisconsin Now lawsuit, and it's  
10 certainly something that election officials have to  
11 take into consideration.

12 Q. What are the voting hours in Wisconsin, or  
13 do they truly vary by jurisdiction?

14 A. Well, they used to vary by jurisdiction.  
15 They are now standard. On election day they are from  
16 7:00 in the morning until 8:00 at night. In terms of  
17 what we call early in-person absentee voting, which you  
18 would refer to as advanced voting, that was a subject  
19 in the lawsuit that we were talking about, One  
20 Wisconsin Now. But municipalities have a lot of  
21 flexibility. It used to be restricted to one location,  
22 but they had almost no restriction on hours. The  
23 legislature scaled that back considerably. And --

24 Q. Is it -- go ahead. I'm sorry. I thought  
25 you were done.

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1           A.     I was just going to say and the lawsuit  
2 addressed some of that scaling back.

3           Q.     All right. Does your report -- I didn't see  
4 it, so I'll just ask. Does your report provide an  
5 opinion on whether the selection of polling locations  
6 and setting of hours in Georgia is sufficient?

7           A.     My report -- I mean, what I read in the  
8 materials about both closing polling places and  
9 expanding polling places and accessibility to polling  
10 places informed my opinion about training but not about  
11 whether or not -- what's going on with advanced voting  
12 locations and polling places. So no specific opinion.  
13 It just reinforced or gave me factors to consider in  
14 talking about the training.

15          Q.     Okay. You have not read the depositions of  
16 the plaintiffs' experts that you -- right? You've just  
17 read their reports?

18          A.     Just the reports, that's right.

19          Q.     Okay. You say in the next paragraph that "A  
20 voter-centric focus will also mitigate the impact of  
21 discrimination in the voting process directed towards  
22 persons of color." Do you see that?

23          A.     I see that.

24          Q.     Does that sentence presume that there is  
25 discrimination in the voting process directed towards

1 persons of color?

2 A. That sentence presumes that there can be and  
3 that by focusing specifically on the voter and the  
4 voter rights, you act in a colorblind or color neutral  
5 manner.

6 Q. All right. And your report does not opine  
7 that there is discrimination against persons of color  
8 in voting in Georgia, does it?

9 A. My report is informed by the past history of  
10 voting practices in Georgia, the concerns that have  
11 been raised in media reports over the years, and the  
12 concerns raised in the lawsuit, but it does not  
13 specifically have an opinion as to whether or not that  
14 is the case. It's really directed at that by making  
15 sure that the training programs are voter-centric,  
16 transparent, that you're going to avoid and you're  
17 going to protect against having those kind of  
18 discriminatory impacts.

19 Q. In the next paragraph after the one we just  
20 talked about, you discuss absentee voting and  
21 provisional ballots. Is it your contention that --  
22 well, strike that. I think we've covered that area.  
23 What would you say based on what you've seen is the  
24 foundation for conducting elections in Georgia?

25 A. I'm sorry. What do you mean the foundation

1 for conducting elections?

2 Q. I'm looking on page 17 of your report, page  
3 18 of the court's document. The second paragraph ends  
4 with "This training approach would send a message to  
5 everyone involved in the electoral process, from poll  
6 workers to county election officials to voters to  
7 candidates, that enabling full participation by all  
8 voters is the foundation for conducting Georgia  
9 elections." So my question is what do you believe is  
10 the foundation for conducting Georgia elections?

11 A. You mean as opposed to serving the voter?

12 Q. No. I mean, I couldn't tell from that  
13 paragraph if you were implying that Georgia elections  
14 had a different foundation.

15 A. No, no, I was not -- I was saying that that  
16 should be the foundation of any electoral system is  
17 facilitating participation by the voters, protecting  
18 their rights. And I wasn't suggesting that that  
19 wouldn't be the foundation, but to ensure that people  
20 who participate in the process understand that. That's  
21 what my recommendations are going toward.

22 Q. I gotcha. Okay. All right. Let's look at  
23 the same page, the second full paragraph under the  
24 underlined "Mandatory Uniform Training Protocol for  
25 Poll Workers." The last sentence of that paragraph

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1 says, "A mandatory state-directed uniform training  
2 program for poll workers is the best way to ensure the  
3 citizen's right to vote is protected and eligible  
4 citizens are able to cast a vote and have that vote  
5 counted." Do you see that?

6 A. I do.

7 Q. So if the state were to adopt your opinion  
8 here, it would prohibit counties from creating their  
9 own training programs, wouldn't it?

10 A. Not necessarily. I think you set a bottom  
11 line with your mandatory program. And I think there's  
12 a recognition that training is not a static thing, that  
13 new information is important, new techniques are  
14 important. But it should be the Secretary of State's  
15 office or the chief election officer's office that is  
16 leading that to make sure that the essentials are being  
17 taken care of on that and that leaving it just to local  
18 officials to make up on their own is not going to  
19 ensure that things are done in a uniform manner, that  
20 all voters have the same opportunities because their  
21 poll workers have gotten the same basic information.

22 But I don't think it restricts counties from  
23 adapting that program. Certainly how our materials are  
24 presented in Wisconsin and I would think in other  
25 places is not going to be exactly the same, but you

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1 want to make sure that the fundamentals are there. I  
2 mean, we adopted a rule that for training poll workers  
3 that laid out the kind of things that had to be  
4 covered, but we didn't say in order to cover it you  
5 need to get these elements done or that you had to do  
6 it in a particular way.

7 So I don't think that this hamstrings the  
8 counties or puts them at risk if they are enhancing the  
9 program. I think it's if they're ignoring the program  
10 or if they don't have that direction that the whole --  
11 all of the -- you know, the chief election officer and  
12 the voters are the ones that become at risk.

13 Q. That's ultimately a policy decision, isn't  
14 it, in terms of who provides the training, counties or  
15 state?

16 A. It's a policy decision as to who does it,  
17 but the impact of the failures are going to rest, you  
18 know, on the chief election officer if those failures  
19 impact voters' rights, as well as they're going to fall  
20 on the voters and the people who failed to comply. But  
21 that's why the responsibility I think ends up resting  
22 with the chief election officer.

23 Q. Is it your opinion, though, that counties  
24 cannot effectively train poll workers and their own  
25 officials in a way that avoids depriving persons of



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1 their rights to vote?

2 A. I think they're capable of doing that, yes.  
3 I think they probably do it in many cases. But if you  
4 want to ensure that it's being done, I think you need  
5 to have some mandatory elements to the program that  
6 ensure uniformity.

7 Q. So really what we're -- I'm sorry. I  
8 thought you were done. Go ahead.

9 A. I was just going to say, you know, the  
10 quotes come from the statute. You know, the citizen's  
11 right to vote is protected, citizens are able to cast a  
12 vote and have that vote counted, those are standards  
13 that are set in Georgia law.

14 Q. Agreed. But it's also in Georgia law that  
15 counties train the poll workers, and so my question is  
16 do you think that Georgia law creates an impossibility  
17 where counties are responsible for training poll  
18 workers and that there's still to be uniformity across  
19 the state?

20 A. No, I don't think that --

21 MS. TANIS: Object to the form.

22 A. All right. As I said, I don't think those  
23 are incompatible.

24 BY MR. BELINFANTE:

25 Q. And when you came to the conclusion that a

1 state mandated -- or, excuse me, a mandatory  
2 state-directed uniform training program is the best  
3 way, are there case studies you relied on for that?

4 A. No, there were not case studies. It's,  
5 again, based on my experience that if there is not  
6 leadership at the state level, you're not going to get  
7 uniformity, you're not going to get compliance. You're  
8 going to have instances of people being deprived of  
9 their right to participate in the process.

10 Q. Looking further down the page, you say in  
11 the last full paragraph, "Although the manual contains  
12 helpful information, it is far from comprehensive and  
13 contains large chunks of statutory language that are  
14 difficult to understand. It also takes an  
15 inappropriately passive approach to issuing provisional  
16 ballots, which appears from my review of complaints in  
17 the 2018 general election to be a significant source of  
18 inconsistent practices." What did you mean by passive  
19 approach to issuing provisional ballots?

20 A. Further on in my report there are examples  
21 of the language that's in that manual that suggests  
22 that you may do something, you might do this, if the  
23 voter asks you may do it. That to me when I read that,  
24 I'm like wait a minute. Provisional ballots, you need  
25 to be much more specific about when and how you do

1 this, not, oh -- that was my conclusion from looking at  
2 those materials. There's an awful lot of permissive  
3 language in there, and it's cited later on in the  
4 report.

5 Q. Are there states that you would have Georgia  
6 look to that does a better job of training in a more --  
7 or, excuse me, in a less passive approach?

8 A. Well, that's a language choice in this case.  
9 I mean, I think from my experience with the provisional  
10 ballot training we do, we are very clear what the  
11 conditions are that you can do it, what the conditions  
12 are that you can't do it. Provisional voting varies  
13 across states. There are different rules to that, and  
14 it can be very confusing.

15 I mean, I mention in my report a couple of  
16 times that from my experience provisional voting and  
17 absentee voting seem to be the biggest challenges for  
18 local election officials, whether they're at the  
19 administrative level, municipal or county, or at the  
20 polling place level. And that's why they require  
21 focus.

22 It appears here -- I'm looking at what was  
23 the state election training for poll workers, and one  
24 of its failings to me was that the language choices are  
25 very passive about the issuance of provisional ballots.

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1 The whole manual has challenges because it's not very  
2 comprehensive. It doesn't flow easily. It's  
3 interruptive of the statutory language. It has a  
4 number of good elements, but it's not a very well  
5 organized or complete training document.

6 Q. Okay. In your experience, are most poll  
7 workers pretty reliable voters in the sense that they  
8 vote frequently?

9 A. I honestly don't know. It makes sense to me  
10 that poll workers probably do vote frequently. I know  
11 that in Wisconsin we've had to address concerns -- this  
12 was before absentee voting became more prevalent --  
13 that poll workers who were assigned to a location other  
14 than where they could cast their ballots had the  
15 opportunity to vote by absentee. So I think my sense  
16 is if you're working at a polling place, you're  
17 probably going to be a fairly active voter, at least on  
18 the days that you're voting -- that you're working.

19 Q. Okay. You write on page 20 at the top, top  
20 of the page number 19 of your report, that "It is  
21 important for poll workers to be presented with a  
22 voter's perspective." And so my question is what  
23 exactly would that look like even in training  
24 materials?

25 A. Well, in a TTX training scenario, what we

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1 call a tabletop exercise, poll workers would be  
2 presented with a situation such as a voter comes in to  
3 a polling place, and you describe their confusion or  
4 you describe what their issue is. Then you ask the  
5 poll worker how would you handle this or what should  
6 you do in this situation. But by putting it into a  
7 scenario where you're describing the voter situation,  
8 you've given them that perspective on that, and that's  
9 what they're going to actually encounter on election  
10 day.

11 Q. And is it your opinion that by failing --  
12 presuming that that's not done, is it your opinion that  
13 not doing so causes constitutional violations in an  
14 election?

15 A. It's my opinion that by putting these kind  
16 of scenarios in you are going to reduce or eliminate  
17 the possibility that poll workers don't know how to  
18 handle the situation where someone's vote wouldn't be  
19 counted that should have been counted.

20 Q. And the same is true -- is it your opinion  
21 that by telling poll workers that people's votes count  
22 and people's votes matter that they're less likely to  
23 engage in conduct that violates someone's  
24 constitutional or statutory rights?

25 A. Yes.

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1 Q. Page 19 of your report, the I guess third  
2 paragraph, it starts with the sentence "Provisional  
3 voting is a complex procedure with many different  
4 scenarios." Do you see that?

5 A. Yes.

6 Q. And the decision on whether to use a  
7 provisional ballot is one that requires human  
8 interaction in just about every state; isn't that  
9 right?

10 A. Yes.

11 Q. And so there's always the possibility of  
12 human error when dealing with provisional ballots; is  
13 that fair?

14 A. That's right, which is why you want to be  
15 very focused in your training on that and very clear.

16 Q. What did you mean then in the next sentence  
17 where you say that the manual on provisional ballots is  
18 overly simplified?

19 A. My reading of the manual was that it did not  
20 provide a robust picture of the opportunities for  
21 provisional voting. I don't think that a poll worker  
22 coming from that gets the full impression of how to  
23 deal with issuing, recording provisional ballots.

24 Q. Have you heard the phrase in Georgia "when  
25 in doubt, hand it out"?

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1 A. Yes, I have.

2 Q. Is it your opinion that the default rule in  
3 Georgia is to hand out a paper -- or, excuse me, a  
4 provisional ballot?

5 A. That seems to be what Chris Harvey says  
6 should be the case.

7 Q. And do you have reason to believe that it is  
8 not the case?

9 A. I'm looking at, you know, the complaints  
10 that came in. It seemed like there were a large number  
11 of instances where people didn't get a provisional  
12 ballot. I'm not sure whether or not they were entitled  
13 to it, but it certainly generated concerns that they  
14 were willing to reach out to the Secretary of State's  
15 office and say, "I don't know why I didn't get a  
16 provisional ballot," or other people were deserving and  
17 someone was not getting offered that opportunity.

18 Q. In your experience, have you seen similar  
19 complaints in other states?

20 A. I've read media accounts that suggest that,  
21 yes. I've dealt with election observers who come from  
22 other states to Wisconsin who put a strong emphasis on  
23 that and often have to remind them. In our training  
24 with poll workers, we talk about the fact that they  
25 need to look at our resources when it comes to how you

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1 process a provisional ballot because you can't -- as I  
2 said, the requirements and the provisions are different  
3 in different states.

4 Q. Okay. Have you ever gone and observed an  
5 election in another state?

6 A. I'm reasonably sure I have. I'm just trying  
7 to think of the actual experiences of that. I have  
8 observed elections in South Korea. For some reason I  
9 can't -- I want to say yes, but I just can't give you  
10 an example.

11 Q. Okay. That's fair. And let me ask you  
12 another question on this overly simplified. And I'm  
13 not -- I'm truly not trying to be argumentative, and  
14 forgive me for asking a similar question frequently,  
15 but is there a model kind of training? I mean -- and  
16 I'm thinking almost like the equivalent of a, you know,  
17 model penal code that we learned in law school or the  
18 UCC or something that somebody could turn to for  
19 guidance on best practices as it relates to training on  
20 provisional ballots.

21 A. I'm not aware that there is. I mean, I know  
22 that in the gatherings with the National Association of  
23 State Election Directors people would provide examples  
24 of how they train on provisional ballots. I know that  
25 there's a course on provisional voting -- I'm not sure



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1 if it's specifically provisional voting but where  
2 provisional voting is a key element at the Election  
3 Center. Again, I think a lot of times what you're  
4 looking at with provisional ballots or any other  
5 election-day practice is how can you provide that  
6 information to poll workers and election administrators  
7 and voters in a method that is going to ensure that  
8 provisional ballots are issued appropriately.

9 Q. I'm looking at page -- same page, sorry,  
10 page 19 at the bottom of the page, page 20 at the top.  
11 When you talk about the voter identification documents,  
12 you write -- and this is the fourth full paragraph,  
13 "Interestingly, there is only one person of color  
14 depicted in the 12 examples of acceptable  
15 identification." Do you see that?

16 A. Yes.

17 Q. How does that really impact training?

18 A. It provides the poll workers with an  
19 exposure to the voters that are going to come into the  
20 polling place. I know that when we developed our voter  
21 identification training program, we were very focused  
22 on making sure that the depictions of acceptable forms  
23 of identification showed a diverse group of individuals  
24 by age, gender, and race.

25 Q. But, I mean, is it then the opinion -- or

1 the conclusion to draw from that that Georgia poll  
2 workers don't know what people of different races look  
3 like?

4 A. No. I'm just saying that -- what I'm saying  
5 is that it goes to reinforcing to the poll workers  
6 you're dealing with a diverse population. It's not a  
7 judgment on what they think. It's a question of how  
8 can you make your training materials more effective and  
9 create an atmosphere that doesn't suggest that only  
10 certain people are entitled to vote or only certain  
11 people are going to show up to vote.

12 Q. So it's your opinion that by not including a  
13 more diverse group that the state is implying that  
14 people of color are not going to show up to vote or  
15 shouldn't be able to show up to vote?

16 A. That's not my opinion, but I think you can  
17 draw an inference about the sensitivity to the training  
18 program, to the training protocols when you look at how  
19 materials are presented.

20 Q. Do you believe that Georgia State election  
21 officials are communicating to local officials that  
22 persons of color are not coming to the polls?

23 A. I don't think that's the case, no.

24 Q. Do you think that state election officials  
25 are communicating implicitly or explicitly to

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1 poll workers that persons of color should not be able  
2 to vote?

3 A. That they are? No.

4 Q. Same page, next paragraph, the last sentence  
5 says, "A model state-directed training initiative for  
6 poll workers must provide participants in the electoral  
7 process with confidence that poll workers know their  
8 responsibilities, will help not hinder voter  
9 participation, and are mindful of the integrity and  
10 importance of the vote of each citizen." Was there a  
11 particular model that you had in mind when writing  
12 that?

13 A. No. I think -- I mean, obviously the  
14 language I'm drawing from is from my experience.  
15 That's what animates the training programs that I was  
16 responsible for overseeing. I think the use of the  
17 term model is -- I think this is a way of communicating  
18 this is an essential element when someone is evaluating  
19 their training program that they can see that this is a  
20 focus because it's going to -- I think it moves the  
21 training to ensuring that voters' rights are protected.

22 Q. All right. Are your criticisms of the poll  
23 worker manual all contained in this report?

24 A. I don't think I was quite as harsh in the  
25 report as I just was earlier.

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1 Q. I guess let me ask it this way. Go ahead.

2 A. I was just going to say I think I was more  
3 blunt in my assessment of the quality of that manual.  
4 When you asked me the question, I made some comments  
5 about its deficiencies and its disorganization.

6 MS. TANIS: Josh, I also want to point out  
7 that Kevin said in the report that he was basing  
8 it on the 2018 poll workers manual because he  
9 didn't have the other manuals available to him at  
10 that point. I'm kind of assuming your question is  
11 geared to the 2018 manual but wanted to clarify  
12 that.

13 MR. BELINFANTE: Yeah, my questions are all  
14 geared to the report, which does indicate that  
15 it's based on the 2018 manual.

16 BY MR. BELINFANTE:

17 Q. All right. Actually, my next stuff we've  
18 already covered. On page 21 of the court's pagination,  
19 page 20 of your report, the third paragraph from the  
20 bottom begins with Chris Harvey. There's a sentence  
21 about two-thirds of the way down that says, and it's  
22 talking about the State Election Board, "In addition,  
23 there appears to be a long lag time between the date of  
24 a meeting and when the minutes and transcripts are  
25 posted online." What is the significance of that lag

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1 time? How does that impact the training of election  
2 officials in Georgia?

3 A. Chris Harvey said repeatedly in his  
4 deposition that county election officials in particular  
5 pay attention to what's going on at the State Elections  
6 Board so that they learn from this, that they don't  
7 make mistakes. And if there is a lag time between when  
8 the meeting is and when the results of that meeting  
9 show up, it's pretty hard -- you know, that just the  
10 lapse of time period, the disconnect from any kind of  
11 learning process to the extent that that exists.

12 Q. Were the meetings of the GAB transcribed?

13 A. Well, they were videotaped, almost all of  
14 them were.

15 Q. Okay. And then the video was put online?

16 A. The video was put online. So in one sense  
17 the board's actions were -- I mean, you know, we got a  
18 lot of press coverage at our meetings, so the key  
19 issues we're going to get coverage. We might end up  
20 issuing a press release depending on the nature of a  
21 decision that came out related to election  
22 administration, but we linked to Wisconsin Eye video on  
23 our website.

24 Minutes obviously didn't get approved until  
25 the next meeting. But, again, our meetings were fairly

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1 regular. We had meetings laid out over a two-year  
2 period. One of the things we would do in the summer of  
3 an odd-numbered year was present to the board here's a  
4 set of proposed meeting schedules so that they would  
5 have it on their calendar. Obviously there were times  
6 when we had to have special meetings or adjust a  
7 meeting time if something came up, but our calendar was  
8 pretty well set for two years on that end. You know,  
9 the election cycle pretty much dictated when we were  
10 going to have it so we would be responsive to election  
11 issues.

12 Q. All right. You talk about an example -- and  
13 I probably should but don't know which one it's  
14 referring to. It's in the next paragraph at the last  
15 line. "If there is a more egregious case, it seems  
16 that the election official has already left government  
17 service." Do you recall which case that was or cases?

18 A. I don't remember the specifics of the cases.  
19 You know, when I'm reading these materials, I'm just  
20 trying to -- I wasn't taking detailed notes about, you  
21 know, which county, what the name of the official was.  
22 I was trying to get a sense of how were these handled,  
23 what are we learning from this. And it struck me that  
24 if you had a county official who really wasn't doing  
25 the job and had been identified as such in the report,

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1 they were no longer there by the time the board took  
2 action.

3 Q. And --

4 A. But I can't --

5 Q. Okay.

6 A. -- name one, but I remember there were a  
7 handful of them, two, three, four.

8 Q. And do you recall if that -- I mean, if the  
9 county official was no longer in office as a  
10 consequence of what you describe as egregious conduct?

11 A. My sense was that's why they were no longer  
12 there. I think the county was being proactive in  
13 getting rid of them. I mean, the county, as I  
14 understand it, still had some consequences. They may  
15 have -- they may have been fined. They certainly were  
16 given negative publicity. I don't know if they did a  
17 letter of instruction, you know, a direct letter of  
18 instruction to an oversight body about don't hire  
19 someone like this again, but --

20 Q. And so, I mean, in some ways isn't that  
21 evidence that the process is working, that if there's a  
22 truly egregious violation the county is taking care of  
23 it itself?

24 A. In most cases it tells you that the process  
25 is working. I mean, I think what I was describing were

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1 situations that seemed to be repeating themselves over  
2 and over, whether it's the quality of the voter  
3 registration data, which was reinforced by a couple of  
4 other experts as I mentioned, whether it's the problems  
5 that were being associated.

6 But, I mean, a lot of times the problems  
7 that began that were egregious might not have been  
8 specific to -- may have more to do with did they make  
9 their absentee ballots available in a timely manner,  
10 did they accurately report the numbers from the  
11 election or even timely report the numbers from the  
12 election, were they available when they were supposed  
13 to be to issue ballots. Both seemed to me to be bigger  
14 performance issues that an administrator needs to be  
15 aware of. Again, I don't know those are the cases, but  
16 I'm --

17 Q. Okay. Going to the next page, you talk  
18 about intake of complaints. That's on -- it starts on  
19 page 20 of your report and holds over onto 21, page 21  
20 and 22 of the court document. Is there a kind of gold  
21 standard for how states are to intake complaints about  
22 elections?

23 A. Well, I can point to our practice that every  
24 complaint was logged in and assigned a number. And  
25 that has been my experience with a lot of other law



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1 enforcement agencies in terms of dealing with those  
2 complaints that -- so that we could track the  
3 disposition of them. We had a database available. I  
4 think you get different levels of complaints if there  
5 was any distinction -- or at least a clear distinction  
6 between them.

7 I mean, Chris Harvey says in his complaint  
8 that his staff knew to give him the complaint. The  
9 staff of the commission -- or the Secretary of State's  
10 office directed complaints to him, and later on I guess  
11 Kevin Rayburn was involved as well. I think his role  
12 was as deputy director as well as having the legal  
13 responsibility, from what I read. His later deposition  
14 talks about sharing the handling of complaints with  
15 Mr. Rayburn.

16 But the gold standard I think is how do you  
17 know how many complaints you've got, how do you keep  
18 track of what's going on, what are they about, how were  
19 they disposed.

20 Q. Did you understand Mr. Harvey to say that at  
21 any given time Georgia is not aware of how many  
22 complaints have been received in the office?

23 A. He never gave any indication that he had a  
24 sense of how many complaints were received. There was  
25 no reference to any kind of tracking mechanism or

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1 follow-up other than, you know, the referrals that went  
2 out to investigators or what the standards were for  
3 making those referrals.

4 Q. Well, if the standard is that all of them go  
5 to the investigators, wouldn't that be a standard?

6 A. It would be, but I'm pretty sure that they  
7 don't given a lot of the complaints, as he pointed out  
8 and as I observed, wouldn't be things you'd  
9 investigate. I mean, whether Secretary Kemp should  
10 have been in charge of elections while he was running  
11 for governor was not a complaint that they were going  
12 to, you know, respond to that, or whether that  
13 Challenger Abrams should have continued her  
14 post-election activities. There were a lot of  
15 complaints in those areas that clearly -- I'm making an  
16 assumption here -- didn't get referred to the  
17 investigators to follow up because they were not  
18 actionable under the elections code.

19 Q. Sure. Okay. I think you answered that.  
20 Well, what I guess would be your opinion that they  
21 should do with complaints that come in like that that  
22 are not actionable under the election code? And I'll  
23 give you one just as a clear and easy one. Let's say  
24 somebody does a campaign finance violation and files it  
25 with the Secretary of State's office as opposed to in

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1 Georgia we have our -- it's called something else, but  
2 everyone refers to it as the State Ethics Commission,  
3 it's old name, so there's literally just no  
4 jurisdiction at the Secretary of State's office. What  
5 is your -- go ahead.

6 A. I was just going to make an aside that I  
7 remember the old name and some of the people who worked  
8 there at different times from my campaign finance days  
9 and their participation in the council and ethics laws.  
10 But that's not responsive to your question. To your  
11 question --

12 Q. Yeah, go ahead. Yeah, go ahead.

13 A. I mean, to your question, I mean, I think  
14 there's a couple of different ways of taking care of  
15 that. But I mean -- and I think it's important in  
16 doing this in any setting where you're dealing with  
17 complaints is, you know, categorizing the ones that  
18 aren't actionable. I mean, how much detail you need to  
19 put into them is different.

20 But, you know, if you don't have the  
21 jurisdiction as to campaign finance, that's all you  
22 have to put in. You probably don't have to assign a  
23 number to it. You don't have to worry about followup  
24 tracking, other than maybe saying the person was  
25 referred to the appropriate agency on that or -- I

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1 mean, again, I can tell you we got a whole series of  
2 complaints that we categorized because they were  
3 generated by like an internet-generated complaint.  
4 People would be getting an email, you know, complain to  
5 the Government Accountable Board about somebody's  
6 ballot access issue here. You know, they tended to be  
7 about presidential issues, but they tended to be about  
8 whether or not we should put someone on the ballot,  
9 even though they clearly didn't qualify or whatever.  
10 But, I mean, I think you're familiar with how those  
11 things pop up.

12 I mean, I can think of an instance where it  
13 may not have been about that but where we had like  
14 three or four boxes of these complaints. And, you  
15 know, we made a record how many did we get from the  
16 fact that we didn't even bother to respond to them  
17 because we couldn't justify the effort. And it was  
18 clearly, you know, a targeted mailing that was being  
19 generated through, you know, some internet driven  
20 protocol.

21 Q. And I guess my question is did that specific  
22 criticism, the fact that some complaints may or may not  
23 be logged, speak to training?

24 A. It does because what I -- you know, we  
25 talked about complaints are a metric, and I think in my

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1 report I talk about how complaints help you focus on,  
2 you know, the failures of your training, the failures  
3 in your performance that you want to rectify. I mean,  
4 it's an important metric, and so you want to make sure  
5 that you can document that.

6 I think you want to treat it just like the  
7 training to the extent that the law permits. You want  
8 to be able to say nobody -- we're not having these  
9 issues. I mean, I anticipated you asking me a number  
10 of questions about comparisons between Wisconsin and  
11 Georgia, and my response has been those issues did not  
12 surface in Wisconsin. We had others.

13 But the reason why you -- I mean, from what  
14 I gleaned from looking at the depositions and the  
15 minutes and the complaints were that there wasn't a  
16 clear tracking mechanism on the complaints or  
17 categorization method or any kind of action that  
18 converted that into training, whereas from my  
19 experience when we had some complaints, not only did we  
20 take action and incorporate it in our training, we let  
21 the general public know that that's what we were doing.

22 And I think that's one of the reasons why  
23 from my experience Wisconsin had a high confidence  
24 rating by participants in the process, whether it's the  
25 candidate or the voters. We had a UW Madison survey

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1 where they looked at that through a couple of  
2 elections, and that was important in Wisconsin during  
3 some of the more tumultuous periods of time that we  
4 had.

5 Q. When were those surveys conducted?

6 A. They were conducted like 2012, 2016. I  
7 think Ken Mayer actually refers to one of them in his  
8 deposition. He was part of the UW -- by UW I mean  
9 University of Wisconsin -- Madison political science  
10 team that we had and that we brought in for the  
11 conducting of those surveys.

12 Q. So was that before the issue with the  
13 supreme court justice election?

14 A. It was probably after.

15 Q. After? Okay. Have you had candidates  
16 running for office in Wisconsin who have made a  
17 campaign issue out of election administration and  
18 attacking another candidate for election  
19 administration?

20 A. Not to the extent that I've seen in other  
21 places because the chief election officer is -- you  
22 know, was me, and my accountability was not at the  
23 ballot box. It was in the hands of a citizen board so  
24 that I was auditioning for my job every day as opposed  
25 to just on election day. And so, I mean, I'm aware

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1 that in other states that's not an unusual practice.  
2 But, you know, we would have candidates for secretary  
3 of state who wanted to take back election  
4 administration from the citizen board. And that would  
5 be the last one. They generally couldn't articulate  
6 that there was a problem with that. None of them won  
7 election. Our current Secretary of State, who was  
8 Secretary -- has been Secretary of State since just  
9 after the election board was created, never had any  
10 responsibility with elections, but he would be the one  
11 to challenge on that.

12 Q. All right. One of the things you talk about  
13 on page 21 of your report, page 22 of the court's, is  
14 post-election audit of polling places throughout the  
15 state.

16 A. Yes.

17 Q. What kind of audit --

18 A. Okay. I'm sorry. I spoke ahead of you.

19 Q. I think we're headed to the same place.

20 What kind of audits were being conducted?

21 A. What I'm saying is an accountability tool,  
22 an assessment tool, a performance audit. In election  
23 administration, there are performance audits of any  
24 number of aspects of administration, you know, looking  
25 at how do you process complaints. But there's also

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1 post-election audits of election results because, you  
2 know, it's a whole different area and it's something  
3 that we talked about in the National Academy of  
4 Sciences report. And it's often talked about as an  
5 accountability tool for the validity of election  
6 results.

7           Here I'm talking about the performance  
8 audits, and other states have done this. Washington  
9 State is a good example of this. I wanted Wisconsin to  
10 do it, but I was looking -- I tried to convince the  
11 legislature to adopt that as a policy. But basically  
12 it would involve going in after the election to review  
13 the paperwork, review complaints, evaluate how good of  
14 a job was done in administering elections in different  
15 categories. And in this case I'm talking about how did  
16 you run an election on election day, although you could  
17 also focus on advanced voting as well.

18           Q.     What was the -- while you were there, what  
19 was the budget of the GAB?

20           A.     You know, I'm not quite sure. I would be  
21 speculating on it. I mean, I can tell you to put it in  
22 the perspective that until the Help America Vote Act  
23 and prior to 2000, my peak number of employees for  
24 elections and campaign finance was 14, including  
25 myself. More likely it was closer to 11 individuals.



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1 And that's going to be one of your big driving aspects  
2 of this. You know, the current election commission,  
3 the last count that I saw, and it's based on looking at  
4 contact information in my poll worker manual, was 25  
5 individuals. And that's not too different from --  
6 maybe down a little bit from when I was there for the  
7 election division.

8 But because we had two different divisions,  
9 our legal staff and administrative staff were really  
10 supporting both divisions, which included the campaign  
11 finance, ethics, and lobbying functions as well,  
12 although that division itself had I think six or seven  
13 employees out of the full complement of 40-plus  
14 employees.

15 Q. All right.

16 A. I'd like to point out --

17 Q. Go ahead.

18 A. I'd like to point out that it's 3:45, so  
19 we've been going at this for two and a half hours.

20 Q. Yeah. I was just about to say if y'all give  
21 me about ten minutes, I can probably wrap this up.

22 A. Well, even if you want ten minutes, can I  
23 get two minutes before you do that?

24 Q. Sure.

25 A. I would be more comfortable answering the

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1 questions in the next ten minutes if we take a  
2 two-minute break.

3 Q. No, no, no. I'm saying let's take a break.  
4 I need to go through some stuff, and it'll take me  
5 about ten minutes.

6 A. Okay.

7 Q. And what I'm saying is I might be done.

8 A. Okay. All right.

9 Q. So if you want to take a ten-minute break,  
10 that would be great.

11 A. All right. So we'll get back together at  
12 five minutes to 5:00 your time?

13 Q. Sure.

14 A. Okay.

15 MS. TANIS: Okay.

16 (Whereupon, there was a brief recess.)

17 BY MR. BELINFANTE:

18 Q. Mr. Kennedy, you said that you had expected  
19 me to ask some other questions about your experience in  
20 Wisconsin and the issues you dealt with. What would  
21 you say were the top three issues you were dealing with  
22 while the general counsel at the GAB as it relates to  
23 elections?

24 A. Well, it's hard to say because things were  
25 dynamic. Clearly the biggest challenge had to do with

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1 the administration of recall elections for state  
2 senators and the governor and lieutenant governor that  
3 occurred in 2011 and 2012. Administratively there was  
4 the implementation of the photo ID law that began in  
5 2011, along with the myriad of changes that occurred  
6 between the elections laws that were the subject of the  
7 lawsuit in One Wisconsin Now would probably be the --  
8 you know, combine those two as far as challenges go,  
9 and obviously they had a big impact.

10 You know, when you talk about that  
11 implementation, there's a big education and training  
12 component that goes in with that, as there was with the  
13 recall, and then going back to the continued  
14 implementation and compliance with the HAVA  
15 requirements that had started in 2003 and continued  
16 until the time I left.

17 Q. And how did those issues come to your  
18 attention?

19 A. Well, as chief election officer, they were  
20 clearly the responsibility of my agency to handle them.  
21 I mean, these were -- the recall was -- you know, I  
22 mean, it spawned a whole series of complaints to  
23 investigate, and it forced us to mobilize our staffing  
24 to deal with eventually checking recall petitions that  
25 would have close to a million names of them. But, I

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1 mean, that was generated just by the political climate  
2 that existed in Wisconsin and the current statutory  
3 framework that said that you could hold elected  
4 officials accountable through the recall process.

5 The legislative changes that I was  
6 responsible for, obviously that came from the direction  
7 of the legislature signing those changes into law by  
8 the governor that carried with it their own  
9 implementation requirements. And the Help America Vote  
10 Act was an act of Congress that I think it still  
11 continues in the sense that, you know, people working  
12 at the elections commission are responding to federal  
13 mandates with respect to -- and with respect to  
14 election security and now addressing a pandemic health  
15 issue.

16 MR. BELINFANTE: Understood. All right,  
17 Mr. Kennedy. Beth, do you have any questions  
18 you're going to ask?

19 MS. TANIS: Not that I know of.

20 MR. BELINFANTE: Okay. What I'm going to do  
21 right now is suspend your deposition. The only  
22 reason I'm doing that is if there is a follow-up  
23 report that takes into account additional  
24 evidence, I want to be able to ask you about at  
25 least that new evidence and any new conclusions

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1       you've reached. So I think procedurally the  
2       proper thing to do is to suspend your deposition,  
3       and at this point I don't have any further  
4       questions.

5               MS. TANIS: Okay. And, Josh, I'm a little  
6       bit confused. Are you talking about because of  
7       the documents that were produced after his report?

8               MR. BELINFANTE: Yes, yes.

9               MS. TANIS: Okay. Well, the judge has  
10      already said that this deposition you could ask  
11      about that kind of stuff, so I'm not sure why it's  
12      just being suspended.

13              MR. BELINFANTE: Because he hasn't read it.  
14      And so my point is if he reads it and then issues  
15      a new report or new opinion on it, then I want to  
16      be able to ask him about that.

17              MS. TANIS: Okay. I'm sorry. I'm still  
18      confused. What are you talking about that he  
19      still hasn't read?

20              MR. BELINFANTE: The 2020 poll manual, poll  
21      worker manual.

22              MS. TANIS: Oh, okay.

23              MR. BELINFANTE: And the new training stuff  
24      he's already talked about. It really comes down  
25      to the 2020 poll manual.

1 (Whereupon, a discussion was held off the  
2 record.)

3 MR. BELINFANTE: Sorry about that.

4 MS. TANIS: Okay. I'm not necessarily  
5 agreeing with you, but I do understand what you're  
6 referring to. Thanks.

7 MR. BELINFANTE: Okay. All right. Well,  
8 Mr. Kennedy, let me say again thank you for your  
9 flexibility. Thank you to the court reporter for  
10 doing this on the phone as well and for everyone  
11 else for being flexible and working with us on the  
12 documents as well. So that's all I've got.

13 MS. TANIS: All right. I don't have any  
14 questions. Thank you.

15 (Deposition concluded at 4:02 p.m. CDT)

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This, the 16th day of April 2020.



CYNTHIA B. GATEWOOD, CCR-B-1400

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Deposition of KEVIN KENNEDY

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